Bergey, et al v. Boy Scouts of Amer Doc. 30

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF NEW MEXICO**

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO
06 MAY 12 PM 3:08
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LINDA BERGEY and JAMES R. BERGEY, SR.,

Plaintiffs,

vs. No. CIV-05-0536 MCA/WPL

BOY SCOUTS OF AMERICA
d/b/a PHILMONT SCOUT RANCH BSA,

Defendant.

**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

The Defendant, Boy Scouts of America, d/b/a Philmont Scout Ranch BSA ("Philmont"), seeks summary judgment in this case based on the New Mexico Equine Liability Act. There are no genuine issues of material fact. Plaintiff, Linda Bergey, was injured as a result of equine behavior while engaged in an equine activity. Therefore, under the Equine Liability Act, Philmont is immune from suit for the injuries sustained by Linda Bergey. As a matter of law, summary judgment should be granted dismissing all claims against Philmont based on the provisions of the Equine Liability Act.

**STATEMENT OF MATERIAL FACTS**

For purposes of its Motion for Summary Judgment, BSA states that there are no genuine issues as to any of the following material facts:

1. In July, 2002, Plaintiff, Linda Bergey, came to Philmont Scout Ranch ("Philmont") to participate, as a paying guest, in an eight-day Cavalcade back-country horseback trail ride with Philmont Scout Ranch Cavalcade 706 CX 02. (Complaint, ¶ 7).

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2. The Head Horseman for the Cavalcade, Sara McGatha, was in her third year at Philmont but her first as a Head Horseman. For two prior years she had been a Wrangler. She has extensive horse experience, having been a rider since about age 8, as well as involved in horse shows and competition, and having worked at a riding stable. This was her third Cavalcade of the season and sixth total Cavalcade. (Deposition of Sara McGatha Shaddix, pp. 9-11, 39-40; Deposition of Ben Vargas, p. 21-22).

3. The Wrangler, Eric Perry, was in his second season at Philmont, having been a staff person but not in the horse program the year before also. During his first year, in addition to his staff duties, he had voluntarily worked with the horses at Philmont. Eric Perry had been working with and riding horses since he was a child. (Deposition of Eric Perry, pp. 10-11, 14; Deposition of Ben Vargas, pp. 21-22).

4. On July 7, 2002, Linda Bergey and other guests gathered at the Philmont stables for an initial orientation, horse assignment and training. (Complaint, ¶ 8).

5. Linda Bergey was a novice rider. (Complaint, ¶ 8).

6. Philmont classifies all guest riders as novice riders, and assigns horses based on the rider's height and weight and on an individual discussion with each rider by one of the Philmont wranglers. (Deposition of Hugh Ley, pp. 40-41; Deposition of Sara McGatha Shaddix, p. 45).

7. On the morning of July 7, 2002, the participants received their initial training and horse assignment. The training included how to properly saddle and bridle the horse, grooming of the horse, trail safety, horsemanship, etc. Each rider was responsible for "catching" the horse assigned and was to begin to get to know the horse

along with saddling and bridling the horse. (Deposition of Sara McGatha Shaddix, pp. 42-46).

8. After lunch the group was to participate in a short trail ride to practice the horsemanship techniques on which they had been instructed and generally get the feel of the horse and riding as a group. The participants were in the arena at the Cattle Headquarters practicing riding techniques in a circle with the horses lined up nose to tail. (Complaint, ¶ 18).

9. As a part of the Cavalcade, a packhorse named Spinner was to be introduced to the group. (Deposition of Sara McGatha Shaddix, pp. 40-42).

10. Spinner was approximately 10 years old and prior to coming to Philmont in the spring of 2002 had been used as a saddle horse at a private riding stable owned by Nancy Burch. Ms. Burch had sold horses to Philmont in the past. She did not report any experience with Spinner bucking, biting other horses, or being antisocial towards other horses. (Deposition of Ben Vargas, pp. 15-16).

11. When Spinner was purchased by Philmont, he was ridden several times by Ben Vargas, Horse Foreman and numerous wranglers, prior to his assignment to Clark's Fork. While at Clark's Fork, Spinner was ridden by several wranglers and determined to have problems wandering out of line when tested as a trail ride horse. Therefore, Spinner was not being used as a saddle horse at Clark's Fork. Ben Vargas decided to transfer Spinner to Cattle Headquarters and convert him to a packhorse. (Deposition of Ben Vargas, pp. 15-16).

12. Spinner had been packed prior to July 7, 2002, including on the day before the incident, Spinner had been packed and taken on a short trail ride. (Deposition of Ben Vargas, pp. 25-28; Deposition of Eric Perry, p. 46).

13. On the day of the incident, Spinner was once again packed in the morning and was to be introduced into the trail line that afternoon. (Deposition of Sara McGatha Shaddix, pp. 40-42).

14. Plaintiffs allege and statements from Plaintiffs' witnesses indicate that while the group was in the process of saddling and bridling their horses in a corral adjacent to the arena, a wrangler attempted to bring Spinner while packed into the corral. This caused the horse that Steve Bergey was riding to "set back." (Deposition of Steven J. Bergey, p. 27).

15. Steve Bergey's horse had set back several times prior to the claimed incident with Spinner. (Deposition of James Bergey, p. ___, (not transcribed as of the date of filing of this motion)).

16. Some horses have a propensity to sit back. (Deposition of Hugh Ley, pp. 104-105).

17. After the alleged incident with Steve Bergey's horse, a wrangler other than Eric Perry then walked Spinner along the outside of the corral and attempted to re-enter the corral at the opposite end, next to three horses tied to the fence with three of the female participants. (Complaint, ¶ 11).

18. There was an incident where horses in the area got spooked. There is disputed testimony that Spinner broke away from the wrangler causing the three horses to spook. Some witnesses claim that Spinner was immediately caught and Head Horseman

Sara McGatha ordered Spinner removed from the corral and taken to the arena area. McGatha has testified that horses spooked and she did not see Spinner loose. (Deposition of Steven J. Bergey, pp. 28-29; Deposition of Sara McGatha Shaddix, pp. 48, 55-56). For purposes of this Motion, only, it is assumed Spinner did break loose.

19. After lunch, the participants walked their horses to the arena. Spinner was already in the arena. (Deposition of Sara McGatha Shaddix, p. 51).

20. There is a photograph showing a horse with what appears to be a slicker over its head. The horse in the photograph may be Spinner. (Deposition of Sara McGatha Shaddix, Ex. 8).

21. The technique known as "sacking" by placing a slicker over the horse's head to desensitize the horse to slickers is an appropriate technique. (Deposition of Hugh Ley, pp. 84-85).

22. The participants, including Linda Bergey, began riding in a circle some distance from Spinner. (Complaint, ¶ 18).

23. Wrangler, Eric Perry, untied Spinner from the fence, walked Spinner over to his horse, mounted his horse, and was leading Spinner using a rope. Eric had previously ridden Spinner several times and had had no problem with Spinner either prior to or up to that point in time. (Deposition of Eric Perry, pp. 45, 61, 72).

24. Spinner suddenly broke free, pulling the rope out of Eric Perry's hand, and running headlong towards the group of riders. (Deposition of Eric Perry, pp. 61, 72).

25. Apparently, Spinner ran into or brushed past Linda Bergey's horse "Romeo", causing Romeo to fall and throw Linda Bergey to the ground, and injuring Linda Bergey. (Deposition of Eric Perry, p. 72).

26. Plaintiffs' expert, Hugh Ley, has given his opinion that Philmont was negligent in failing to properly staff the Cavalcade with a sufficient number of wranglers and with wranglers sufficiently experienced to assess the horses. (Rule 26 Expert Report of Hugh Ley, attached as Exhibit C to Ley Deposition).

27. Hugh Ley did not know Sara McGatha's and Eric Perry's level of experience prior to rendering his opinion and did not know that Philmont supervisors were involved in assessing the horses. (Deposition of Hugh Ley, pp. 44-45, 67-68; Deposition of Ben Vargas, p. 18).

28. The number of wranglers working with the Cavalcade was in accordance with national standards for stables and is greater than the number Hugh Ley uses at his own stable. (Deposition of Ben Vargas, p. 22; Deposition of Hugh Ley, p. 36).

29. Hugh Ley has rendered an opinion that Philmont was negligent in introducing a "new, green" packhorse into the Cavalcade. (Rule 26 Expert Report of Hugh Ley, p. 3).

30. Hugh Ley assumed Spinner was a "bronc" and was not aware prior to rendering his opinion that Spinner had ever been used as a packhorse before. (Deposition of Hugh Ley, pp. 68-69, 114).

31. Hugh Ley has opined that Philmont was negligent in failing to appropriately assign the horses based on the rider's individual abilities. (Rule 26 Expert Report of Hugh Ley, p. 3).

32. Hugh Ley was not aware that Philmont assigned horses following an individual discussion with each rider by the Wrangler. (Deposition of Hugh Ley, pp. 41-42).

33. It is Hugh Ley's opinion that Philmont was negligent in having Spinner in the arena after the two prior incidents involving Steve Bergey's horse setting back and Spinner allegedly breaking loose and spooking other horses in the corral. (Rule 26 Expert Report of Hugh Ley, pp. 2-3).

34. No one knows why Spinner shied or bolted when Eric Perry was leading him. (Deposition of Sara McGatha Shaddix, p. 59; Deposition of Eric Perry, pp. 61, 72; Deposition of Hugh Ley, p. 125).

35. The fact that Spinner bolted and collided with another horse does not mean there was anything the wranglers did wrong. (Deposition of Hugh Ley, pp. 55-56; Rule 26 Expert Report of Hugh Ley, p. 4).

36. Horses have a propensity to shy, bolt, and collide with other animals, and Spinner's shying or bolting and colliding with Linda Bergey's horse on July 7, 2002 is a classic example of unpredictable horse behavior. (Deposition of Lar Thomas, pp. 95-96; Deposition of Hugh Ley, pp. 32-34).

## ARGUMENT

Plaintiffs assert claims of negligence and breach of contract against Philmont for injuries sustained by Linda Bergey during the initial orientation ride for an extended horseback Cavalcade. The material facts are undisputed in this case. The injuries sustained by Linda Bergey, however, were the result of classic equine behavior by the horse, Spinner, not the result of any negligence on the part of Philmont. Under the provisions of New Mexico's Equine Liability Act, the operator of a stable is immune from suit for injuries sustained as the result of equine behavior. Therefore, as a matter of law, summary judgment should be granted and all claims against Philmont dismissed based on the provisions of the Equine Liability Act.

The New Mexico Equine Liability Act states that "[n]o person, corporation or partnership is liable for personal injuries to or for the death of a rider that may occur as a result of the ***behavior of equine animals*** while engaged in any ***equine activities***." NMSA 1978, § 42-13-4(A) (emphasis added). The Act defines "equine activities" to include riding a horse that belongs to another. NMSA 1978, § 42-13-3(B)(4). It is undisputed that, in participating in the initial orientation ride for the Cavalcade, Linda Bergey was engaged in equine activities.

The Act also defines "behavior of equine animals" to mean:

> "the propensity of an equine animal to kick, bite, ***shy,*** buck, stumble, ***bolt,*** rear, trample, ***be unpredictable or collide with other animals,*** objects or persons"

NMSA 1978, § 42-13-3(C) (emphasis added). The Equine Liability Act very clearly expresses a policy that equine operators should not be held liable for equine behavior. *Berlangieri v. Running Elk Corp.*, 2003 -NMSC- 24, 134 N.M. 341, 76 P.3d 1098, 1110-1111. Section 42-13-4(B) of the Act further bars a cause of action against the operator unless the action is based on the negligence of the operator. Section 42-13-4(C) provides specific causes of injury which are not intended to be excluded from liability under the Act. All of the examples within this subsection refer to acts of the operator, not the horse, and thus are not characterized as equine behavior under Section 42-13-3(C) Thus, the Act expresses in general terms a policy that operators should be held liable for negligence, but not for events precipitated by equine behavior.

The exceptions to immunity from liability under the Equine Liability Act are set out in Section 42-13-4(C) of the Act. The first exception arises where the operator of an equine activity "provided the equipment or tack, and knew or should have know that the equipment or tack was faulty..." NMSA 1978, § 42-13-4(C)(1). In this case, there is no evidence or allegation of any issue involving faulty equipment or tack.

The second exception arises where the operator provided the horse and failed to make reasonable efforts to determine the rider's ability to engage in the particular activity safely and to safely manage the horse based on the rider's representations of his ability. NMSA 1978, § 42-13-4(C)(2). Plaintiffs' expert, Hugh Ley, has rendered an opinion that Philmont was negligent in assigning the horses.

However, Philmont classified all guest riders as novice riders. Ley has testified that he did not know the Philmont wranglers had individual discussions with each rider and assigned the horses on that basis. Ley has stated this would change his opinion. Ley's opinion lacks an accurate factual foundation and is not competent to establish any negligence. *Harrison v. ICX, Illinois-California Express, Inc.*, 98 N.M. 247, 250, 647 P.2d 880, 883 (Ct.App.1982 ). See,also, *Lay v. Vip's Big Boy Restaurant*, 89 N.M. 155, 548 P.2d 117 (Ct. App. 1976); *Galvan v. City of Albuquerque*, 85 N.M. 42, 508 P.2d 1339 (Ct. App. 1973). Further, even if Philmont had been negligent in assigning the horses, the undisputed facts do not establish that Linda Bergey's injuries were the proximate result of any problem in assignment of her horse.

The third exception relates to dangerous conditions in the land or facilities which cause an injury. § 42-13-4(C)(3). Plaintiffs make no allegation that such a condition of the land or the facilities located on the land caused or contributed to Linda Bergey's injuries.

The fourth exception to the protection afforded by the Act arise where the operator committed an act or omission that constitutes conscious or reckless disregard for the safety of a rider. § 42-13-4(C)(4). In the instant case, Plaintiffs do not allege and there is no evidence of any act or omission on the part of Philmont that rises to the level of conscious or reckless disregard. To the contrary, the only allegations in this case are claims of negligence. Similarly, the fifth exception pertains to intentional efforts on the part of an operator to injure the rider. § 42-13-4(C)(5). Again, Plaintiffs make no allegations in the Complaint that Philmont intentionally injured Linda Bergey.

Hugh Ley's opinions that Philmont's wranglers and horsemen were negligent in assessing the horses and in introducing a "green" horse into the Cavalcade string as a pack horse are similarly based on unsupported assumptions and inaccurate facts. These opinions are not competent evidence to support any claim of negligence on the part of Philmont. *Harrison v. ICX, Illinois-California Express, Inc.*, 98 N.M. 247, 250, 647 P.2d 880, 883 (Ct.App.1982). See, also, *Lay v. Vip's Big Boy Restaurant*, 89 N.M. 155, 548 P.2d 117 (Ct. App. 1976); *Galvan v. City of Albuquerque*, 85 N.M. 42, 508 P.2d 1339 (Ct. App. 1973).

The competent, undisputed evidence shows that none of the exceptions to immunity from liability recognized in the Equine Liability Act apply in this case. Nor is there any other evidence of negligence on the part of Philmont or its employees that was a proximate cause of injury to Linda Bergey. Instead, the undisputed facts demonstrate that Linda Bergey was injured when Spinner unpredictably shied, bolted, and collided with the horse ridden by Linda Bergey. (Deposition of Eric Perry, pp. 61, 72; Deposition of Lar Thomas, pp. 95-96; Deposition of Hugh Ley, pp. 32-34). The fact that Spinner suddenly shied, bolted, or collided with another horse does not show that there was any negligence on the part of the wranglers or Philmont. (Deposition of Hugh Ley, pp. 55-56; Rule 26 Expert Report of Hugh Ley, p. 4).

The evidence establishes that the accident was the result of equine behavior while plaintiff was engaged in an equine activity. NMSA 1978, § 42-13-4. As a matter of law, Philmont is immune from liability for the accident and injuries claimed by Linda Bergey in this case. Therefore, summary judgment should be granted based on the Equine Liability Act. NMSA 1978, § 42-13-4(A); *Berlangieri v. Running Elk Corp.*, 2003 - NMSC- 24, 134 N.M. 341, 76 P.3d 1098, 1110-1112. See, also, *Amburgey v. Sauder,* 605 N.W.2d 84, 87-90 (Ct. App. Mich. 1999) (summary judgment appropriate under equine liability act where there is no evidence that the horse's behavior represented anything other than an unpredictable reaction to a person or an unfamiliar object); *Muller v. English,* 472 S.E.2d 448 (Ct. App. GA 1996).

## CONCLUSION

The undisputed facts of this case establish that Plaintiff, Linda Bergey's injuries occurred as the result of equine behavior while she was engaged in equine activities. He injuries were caused by a horse engaging in classic equine behavior by suddenly spooking or bolting and colliding with Linda Bergey's horse. Therefore, under the provisions of the Equine Liability Act and as a matter of law no liability may attach to Philmont arising from those activities.

Philmont would respectfully request the Court grant summary judgment and dismiss all claims against it in this case, based on the Equine Liability Act.

Respectfully submitted,

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I hereby certify a true copy of the foregoing pleading was mailed to all counsel of record this 12th day of May, 2006.

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# In The Matter Of:

*LINDA BERGEY and JAMES R. BERGEY, SR. v.*
*BOY SCOUTS OF AMBERICA, ET AL.*

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*STEVEN J. BERGEY*
*April 23, 2006*

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A: Well, they brought the horse that hit my mom's horse into the gate next to my horse.

Q: But you were down by your mother's horse; is that right?

A: Yes.

Q: Okay. Now, they brought in the packhorse. Is that the one you're talking about?

A: Yes.

Q: Did it have a pack on it?

A: At that point in time, I can't remember if it had a pack on it or not.

Q: Was the horse by itself or was there somebody with it?

A: The horse — somebody was leading the horse.

Q: Was the person leading the horse Sara or Eric?

A: I don't know.

Q: So someone is leading the packhorse in through the gate next to where your horse is tied; is that right?

A: Yes.

Q: Is there anyone with your horse?

A: I believe — let's see. Everybody — it was me — I was still next to my mom. Nobody was with my horse. And I believe Jay, Ryan and Ross were all still there next to their horses right next to where the packhorse was getting led.

Q: What happened at that point?

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A: At that point in time, as soon as the packhorse came through the gate next to my horse, it seemed as though as soon as my horse saw that horse, my horse did not want anything to do with that horse. It stood up almost and sat down on its back legs, and I either thought that the rope was going to snap or the fence was going to come up at that point. I was so happy I was standing next to my mom when that happened. I was really happy. And then they led the horse away after that.

Q: Where did they lead it?

A: They took the horse around — if you look at the cattle headquarters map, they took the horse around down to the other end and brought it to the other gate. Do you see where that gate is?

Q: When you say "they," is it more than one person?

A: I say they. They is the person who was leading the horse. It's an unknown person. I can't remember.

Q: Okay. So they led him down along the dotted lines, and what happened next?

A: They brought him through the gate, and they were either — they were trying to tie him up. The horse got away and was running into the horse down at the other end, that was tied up along the fence, which are the dash marks on the map, those little dash marks. And he started running to those horses. Now, down at that end is where I recall a couple of

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the younger kids were located.

Q: Do you know where the horse — you said they tried to tie him up. Where was that?

A: Well, I mean, I believe the person was bringing the horse into the corral so he could tie him up in the corral next to the other horses.

Q: So you didn't actually see him try to tie him up someplace.

A: No. All I heard was — what happened from that point on, I stood next to my mom, and all I heard at that point was "Get on the fence." And I saw the other horse running from the person who had been holding him, that was holding him.

Q: Do you know where Eric or Sara were at this time?

A: No.

Q: Do you recall any other Philmont employees in the corral at this time?

A: Yes. I mean — well, I don't remember at that point. I would assume there would be the ones that were trying to get him, the ones that were trying to recapture him after he got away, but I don't personally recall anybody like being there. It's like a blur.

Q: Now, you said you were still up by your mother; is that right?

A: Yes.

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Q: And the packhorse would have then been several horses away from you-all; is that right?

A: Yes.

Q: And they told you to get over the fence, correct?

A: I believe what I heard them say was "Get on the fence," just to get away from the horse that was running.

Q: And you said it was running?

A: I believe — he got away and, I mean, he was hitting other horses.

Q: How was he hitting them?

A: Like kind — it's kind of hard to explain. But he got away. He was pretty — I guess he was running.

Q: Well, how were the wranglers able to catch him if he was running?

A: Well, I mean, he must not have been going that fast, but he still got away. He still was able to get away.

Q: When you say hitting other horses, do you mean he ran into other horses, or what do you mean?

A: Yes. He collided with other horses after he got away.

Q: So then you said they were able to catch him, right?

A: Yes. They were able to catch him.

Q: And what happened at that point?

# In The Matter Of:

*LINDA BERGEY and JAMES R. BERGEY, SR. v.*
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*HUGH LEY*
*March 13, 2006*

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*Original File 031306HL.TXT, 133 Pages*
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DISK ENCLOSED

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A: The max that we do on trail rides is 15. That's including the wranglers.
Q: And how many wranglers do you have?
A: Two or three.
Q: You said your father was injured — injured by a mule?
A: Yes.
Q: How did that happen?
A: He was saddling the mule by himself down in the saddle area and some way the mule got him. Broke his neck, C1, C2. Paralyzed him for life.
Q: Did it kick him or throw him off? Do you know what happened?
A: He was not on the mule. He was putting a pack saddle on the mule.
Q: I assume your father was an experienced mule saddler, packer?
A: Yes, he was.
Q: Would it be fair to say that at any given time, an animal, whether it's a horse or a mule, may do something that injures someone?
A: Yes.
Q: Have you yourself ever been injured by a horse?
A: I've been kicked, bit, all that, many times.

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Q: Ever thrown from a horse?
A: Yes.
Q: Ever have a horse go down —
A: Yes.
Q: — that you were on?
A: Yes.
Q: At any of your trail rides or horse packing trips, have any of your guests been injured by a horse?
A: Yes.
Q: Any of them seriously enough to go to seek medical attention?
A: Yes.
Q: Do you know how many times that happened?
A: No.
Q: More than once?
A: Yes.
Q: You're in a wilderness area at least for part of your backpacking trips; is that correct?
A: Yes.
Q: Would you agree that when you're on a backpacking trip, this is not a controlled Disneyland-type ride, you are actually out in the wilderness?
A: The wilderness adds another dimension and

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element to your trip, yes.
Q: Would you agree that being, particularly in the wilderness, that there are a lot of events that could occur, not saying they would, that are not particularly going out?
A: Yes.
Q: Any time you're dealing with equine animals, interaction with other animals or events in their environment can cause them to bolt, buck, or do other things that are not suspected at the time?
A: There's several instances that can cause horses to react to whatever is going on around them, yes.
Q: And you know that. You've had it happen in your trail rides and backpacking trips; is that true?
A: Yes.
Q: Other than your safety briefing, do you have any written policies or procedures for your stables?
A: No.
Q: Do you know anything about the Philmont safety briefings?
A: Only what I've read.
Q: Did you read any of the Philmont manuals, the types of areas they cover on the briefings?
A: Clarify the question, please, types of

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areas.
Q: What they cover in their safety briefings, which is — do you know of that?
A: Yes, basically the same concept that we're talking about here in visiting with the folks and explaining to them the trip and the weather, et cetera, et cetera.
Q: Is there anything that you do in your safety briefing that you're aware of that Philmont does not do?
A: I don't believe they talk to the radio communications that we do.
Q: What are the radio communications?
A: We have two-way radios with our guides that are hooked back to the base station that are hooked back to the vehicles. And we cover — seem to cover a little more information about how to use those in the event of an emergency with the guest.
Q: Do you know whether Philmont, in fact, has radio communications for all their rides?
A: I do not know if they have communications for all their rides.
Q: Do you know what radio equipment that the wranglers and horsemen carry?
A: What kind? No.

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Q: Do you believe, in fact, that they do have radio equipment?
A: I believe in the testimonies there was conversation about the radios, yes.
Q: So the difference, you believe, is what, between what they do and what you do?
A: I believe we just expand a little more about involving the guest in the radio communication if the guide is out of the picture or occupied or that sort of thing, where the radio is, what channel to access on, those sorts of things.
Q: When you have three or four people on a horse trip, how many guides or wranglers do you have with them?
A: Three or four. Typically, we'll have one.
Q: Are you aware of any Philmont policy where at all times, regardless of the number of individuals, they have a minimum of two?
A: I believe CHA requires two on all, and I believe in MC Scouter standards for public facilities used by Boy Scouts, they require two.
Q: So are you aware that Boy Scouts, on all of their trips, regardless of the number, have a minimum of two?
A: Correct.

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Q: Back to your briefing. Other than the radio explanation, is there anything that you're aware of that you do that —
A: I believe beyond that, we're basically the same.
Q: Based on what you've read, do you have any information as to the riding experience levels of any of the participants? And at this point, I'm going to limit it to — start with Linda Bergey, the lady who was injured.
A: To riding levels?
Q: Or experience, yes.
A: Other than in their statements, I don't believe there was any categorization of beginner, intermediate, or advanced riders by Boy Scouts or by them.
Q: So anything that you're aware of would be whatever is contained in their statements that you have previously been shown; is that right?
A: Clarify.
Q: The only information you have on them would have been what appears, for example, in the statement of James Bergey about the incident?
MR. CASEY: Junior.
MR. GREEN: Junior. Excuse me.

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A: What information is there and what is in your tri-county roster about previous treks or that sort of thing.
MR. GREEN: And for clarification purposes, and I'm not going to go through it unless you tell me something different, the information that Mr. Ley has, you've already supplemented in your supplemental responses?
MR. CASEY: That's correct. That's the one that I gave you a list of. You highlighted what you wanted, and we gave you a supplemental and supplemented with that information in there.
MR. GREEN: Correct. And you gave me a copy of the statements with the individuals that you had. But one of them has two pages missing. I'll show it to you.
MR. CASEY: Two pages missing? I'll get them for you. I've been having trouble with the copier. Just tell me which one it is.
MR. GREEN: I'd have to go back and look.
Q: (By Mr. Green) Concerning rider levels, how do you determine rider levels at your stable?
A: We do it two ways. One is disclosure by the participate when we have them sign a ride agreement, which asks them whether they are beginner, intermediate, or expert.
And then also when we have them down at the barn and getting ready, we do the demonstration on the horse with the guests, teaching them how to handle, maneuver, stop, go, all those things. How we want them lined up, spacing, those sorts of things. And we watch and pay close attention to the individuals, their posture, their tentativeness, their ability to approach a horse or not approach a horse.
And we assign horses based on that.
Q: Do you have all your participants sign a release?
A: Yes, we do.
Q: Why?
A: That's one of my insurance requirements.
Q: Do you have any idea of the volume of participants of horses that Philmont operates each year?
A: Only what I've read here.
Q: Based on what you've read, what is your feeling? You don't have to give me an exact number.
A: I would imagine that Philmont is one of the larger operators in the state, if not the largest.
Q: Do you know Ben Vargas?
A: No, I do not, other than meeting him on the

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trip up there.
Q: What about Rod Taylor?
A: I do not. I met him up there.
Q: Do you have a copy of the release you require your riders to sign?
A: No, I do not.
Q: Could you provide a copy to Mr. Casey?
A: Yes.
MR. GREEN: I would ask that you provide a copy to Mr. Casey, that he can review it, and I would request, unless there's some objection, a copy of that.
MR. CASEY: No objection.
Q: (By Mr. Green) Now, in terms of how Philmont assigned horses, what was your impression on how they do it?
A: In reading the information provided to me, Philmont considers all riders novice riders and assigns only on two categories based on height and weight.
Q: Actually, there would be a third category, and that is novice; is that correct?
A: I guess. I'm assuming if you categorize them all as one, it's not a category.
Q: That would be the — in the horse — novice

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is the least experience of horsemen; is that correct?
A: Correct.
Q: Would it be correct that by their classification that it's height, weight, and assuming that they're all inexperienced riders; is that correct?
A: Correct.
Q: I know you've received Eric Perry and Sarah McGatha Shaddix, S-H-A-D-D-I-X, deposition, and you say you just briefly reviewed them. In your brief review, did you see anything about how further classification occurred with regard to assignment of horses?
A: No, I did not.
Q: Were you aware that when horses are being assigned, it was done on a one-on-one basis, either the horsemen or a wrangler with each individual? They talked to the individual before picking out which horse they should catch and be assigned to?
A: In the testimony of — I believe it was Eric Perry, he stated he did not — I believe he stated he did not assign the horses, that Sarah did.
Q: Made the final assignment?
A: Made the final assignment. But I did not read in there anywhere that there was a set format as

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to how they decided which horse went to which rider.
Q: Did you glean from that any information that they actually talked with the individual one on one about their experience before they do the horse assignment?
A: No, I did not.
Q: Would that make any difference to you?
A: Yes, it would.
Q: Did you understand that they were doing this on a one-on-one basis? They would take an individual, talk to them, before they went out to catch a horse?
A: I understood that the individual accompanied them to the pen for the horse. But I did not glean any information that they were interviewing that individual and compatibly matching them with a horse.
Q: If they were talking to them as they were determining which horse, do you think that's appropriate?
A: I would be.
Q: And do you know anything at all about how horses were assigned for participants for riding purposes?
A: No.
Q: In the depositions — or in the discovery responses, which Boy Scouts provided, were you aware

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that all of the horses are ridden by multiple staff members and assigned to — at appropriateness, whether they're usable as saddle horses for novice riders.
A: I saw where the individuals that seemed to be the supervisory staff sat outside an arena when the horsemen and the wranglers rode the horses in the spring of the year and those individuals evaluated those horses and the wranglers and horsemen at that point in time.
From there on, I did not see any other evaluation of the horse program.
Q: Assume for a moment that not only the wranglers in the spring, but at each of the horse camps, rode the horses that would be used and evaluated before any participants ever were allowed to ride the horses. Do you think that's appropriate?
A: Assuming?
Q: That's right, assuming.
A: Assuming, that would be a good deal.
Q: And assuming, in fact, that the horses, before they're ever sent on any trail rides, are evaluated on trail rides by the wranglers and horsemen. Do you think that's appropriate?
A: Depending on the qualification and expertise of the wranglers and the horsemen that are doing the

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riding, and how much background, how much experience,
and how good they are, yes.
Q: What other types of classifications do you go through at your stables?
A: Classification of?
Q: Of the horse, horses?
A: Horses? We typically use our horses — that is the one component in our operation that changes over the course of time. The staff is the same because it's family. The only individual that changes, and I call them employees, are my horses.
And the only horses that leave out of my operation are horses that are no longer able to or work for me. They move out, a new one comes in. Typically the wrangler, myself, Emily, myself, or Conrad, we ride, we pack, we utilize that horse to see what he will do, what he won't do, and we move on from there.
Q: Obviously at Philmont, and they've been in business for more than 50 years, they change every year, employees, to a certain extent; is that right?
A: Yes.
Q: Do you recall what the experience were for either Eric or Sarah?
A: I believe Eric's was a little on the short

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side in terms of horse experience when he started with you guys up there. And Sarah's was some riding that she'd done back East on her own, not so much on the commercial operation.
Q: Were you aware that she'd been — this is her third year at Philmont as a horse person. Were you aware of that?
A: Yes.
Q: And that she was actually a guide at a stable in Ohio before coming to Philmont. Do you recall reading that?
A: No, I don't.
Q: You said Eric, you thought, was a little short. This was his second year at Philmont; is that right?
A: I believe that's right.
Q: And he also had riding lessons and was caring for horses in Virginia as he was growing up?
A: Yes.
Q: So both of them are experienced being around horses; is that right?
A: Experienced to a degree, yes.
Q: Do you know anything about the experience of Ben Vargas or Rod Taylor?
A: No, I do not.

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Q: I assume you wouldn't know any other employees because you — I don't know if you had any information on those?
A: No, I do not.
Q: How long does a horse normally work for you?
A: Once I have a horse that works in my string, typically he stays there until his legs, knees, something goes out on him, and he's no longer able to function for me. So I'm saying probably in the neighborhood of seven to eight years.
Q: Do you know anything about the particular horse, Spinner? This is a packhorse, what his history was?
A: Only what I read in the information you guys have given me.
Q: What do you recall about that?
A: Purchased, brought into the string in 2002, I believe it was, had the incident, and was sold prior — or after. Sorry.
Q: Do you know how long after he was sold?
A: I believe it was the following year.
Q: In your time line, you indicate that — at least question mark whether he was shot. Were you aware this horse was not shot?
A: I believe that was — in one of the

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testimonies, there was an allusion by somebody saying something to that reference.
Q: In your experience running trail rides or even outfitters, do sometimes your participants get a little different impression of what's going on than you, as the leader of the ride, either are saying or observing?
A: I don't think everybody's perception of every incidence is completely different, whether it's a car wreck or what. That's the whole deal of who's a witness and who's not.
Q: Going back to the selection of horses, assume for the moment that the horses are, in fact, ridden by multiple staff members, taken on practice trail rides with different staff members, and evaluated to determine if they're appropriate for novice riders. Do you have any objection to that procedure for assigning horses?
A: Depending on the time that it occurs. I'll give you an example that's not related to your operation, but when you visit with somebody and they say, "I'll put 20 saddlings on this horse," well, it's back to your question of how many hours did you really spend in the field. Twenty saddlings can constitute one hour's worth of work, or it can constitute 20 days

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the horses in.
Q: Do you have any information that Spinner was ever used as a saddle horse for any participants at Philmont? Not staff members. Participants?
A: Not for participants, I do not believe. I do not believe I read that anywhere.
Q: Do you have any information from any source that Ben Vargas personally had ridden and evaluated Spinner?
A: I believe that may be in the interrogatories.
How about a break?
MR. GREEN: That's fine. Any time you want it, just say so.
(A recess was taken.)
Q: (By Mr. Green) While you're looking —
A: It says here he was ridden by Ben Vargas, Jonathan Porter, and Eric Perry.
Q: At least those three people it references; is that correct?
A: That's in the document here, correct.
Q: And the behavior that you referenced in your report, as referenced in the Clark's Fork report, were you aware that was — on trail rides, he tended to wander out of line rather than staying in line?

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A: Only in somebody's report that was where the horse — that was the — one of the issues with that horse was that he would not stay in line.
Q: Did you find any other issues with the horse?
A: Not in any of this material.
Q: Was there anything that you found that stated to an experienced rider, the horse was not a problem?
A: As a saddle horse?
Q: Yes.
A: I don't believe there was anything in any statements denoting any issue with Spinner as a saddle horse, other than that he was stepping out of line.
Q: If you had a horse like that in your string, would you give that to a novice rider?
A: I don't believe a horse stepping out of line constitutes a major problem.
Q: Do you think a novice rider would be able to handle it, or in an abundance of caution, would you not assign that to a novice rider?
A: Again, the interpretation of stepping out of line — I mean, the horse does not — in that, as a saddle horse, does not seem to have any major issues at that point in time based on solely that fact.

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Q: Do you have any other facts at that time that this horse had any other major issues or any issues?
A: Not at that time, I do not.
Q: Now, in your report, which is Exhibit C, November 17th report — do you need a copy of that? Here. On page 4, second paragraph, the first sentence reads, "The fact that the green packhorse broke away from the wrangler at the fence after it had been brought back into the corral, in and of itself, would have not raised any concern as to the conduct of the wranglers."
Do you believe that's still a true statement? Let me get to that sentence right now.
A: Excuse me?
Q: Do you believe that's still your opinion?
A: That I think we've got to take the whole context of the report in one piece.
Q: We're going to get to the whole context. I'm just starting with the first sentence there.
A: The fact that the horse broke away from the wrangler, and that he went back into the string, does it raise any concern as to the conduct of the wranglers in handling of the horse is an issue? Yes. The horse should not have been in that arena with the

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guests at that point in time.
Q: We'll get to that. I'm asking about the first part, first sentence. Or now are you withdrawing that?
A: The conduct of the wranglers in that context, the terminal users of that horse themselves, the kids — and I'm sorry. I'm going to say kids that were the wranglers, they were put into the position by the supervisors to use that horse.
Q: Let me just ask it this way: The mere fact that the horse broke away from the wrangler, does that, in your opinion, indicate any problem with the wrangler?
A: Only that he did not have the capacity to maintain control over the horse. It's not that it was willful or meaningful or anything on his part or her part.
Q: Have you ever had a horse break away from you or one of your crew members?
A: Several times.
Q: So the fact that a horse breaks away, in and of itself, doesn't mean there's anything wrong with the handler?
A: Correct.
Q: Is that what that means?

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A: Correct.
Q: I want to go back to what is Exhibit A, which is the May 11th report. In the report, you list a number of things that you reviewed; is that correct?
A: Correct.
Q: And when was the first time you had any contact with Mr. Casey or anyone else concerning this incident, this case?
A: I got first meeting as 3/18/04.
Q: 3/18/04?
A: Correct.
Q: How many times — how much contact did you have concerning this case between 3/18/04 and 5/11/05?
A: Five.
Q: Five meetings?
A: Uh-huh.
Q: Prior to this case, did you know Mr. Casey?
A: Yes.
Q: How did you know Mr. Casey?
A: I've seen him in Pecos.
Q: Has he ever been a participant with you?
A: No.
Q: In those five meetings between 3/18/04 and 5/11/05, what did you do?
MR. CASEY: Can you clarify that, please?

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Q: (By Mr. Green) What kind of activities were you involved in talking about it, developing opinions?
A: I believe the initial ones he asked me to review what did I think about this, the issue of would I consider taking the case, and then different exchanges of his paperwork and stuff that he had.
Q: Did you request anything from Mr. Casey, or was everything provided to you?
A: Initially, I think he provided everything to me.
Q: Did you ask for, "I'd like to see this or that or whatever"?
A: No. I believe initially, he handed me most of the stuff.
Q: Do you know when in that time period all of this information which is listed in your May 11th, 2005, letter, Exhibit A, was received by you? Initially, or in each one of these meetings, or any way of telling when you actually received the material?
A: I don't have an exact date for that.
Q: Were these five meetings in person or telephone conversations?
A: In person.
Q: Here or in Pecos — or Tererro?

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A: Here.
Q: To the best of your memory, you didn't request any information? All of it was just provided to you?
A: Initially, I did not.
Q: Since that time, have you?
A: The information we looked at, no. The information that I gathered did not come through Mr. Casey.
Q: The information you're referring to, is that the publications you reviewed?
A: The American Horsemen's Association Standards, the CHA, the National Riding standards, the — all of the other publications that are in my file.
Q: Have you ever taught any horsemanship, trail ride, horse backpacking courses with anyone?
A: No.
MR. CASEY: You mean besides a guest, I assume?
MR. GREEN: Correct.
THE WITNESS: I assumed he was talking an educational setting. No.
Q: (By Mr. Green) Not at your facility?
A: Right.

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Q: At any time, there's a question that — you have a question about the form of the question, please say so. I'm sure Mr. Casey will say so. But you're entitled to ask me to clarify any time you want.
This letter, which is Exhibit A, how did that come about? Why were you writing this letter?
A: I was writing that when he asked me if I would look at the case and all this, and then would I take it. I took it and said yes.
And then he says, "Would you look at this information and put a package together to bring this forward?" And that was the preliminary assessment based on the information that he had given me.
Q: And you came to some opinions based on what preliminary information you had; is that correct?
A: Correct.
Q: And I'd like to go through those opinions.
MR. CASEY: If you're going to go through opinions, can we take a break?
MR. GREEN: Yes, we can.
(A recess was taken.)
Q: (By Mr. Green) In your letter, May 11th, 2005, Exhibit A, you came up with some opinions; is that correct?
A: Yes.

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liability on the part of Philmont?
A: I believe that's the interpretation of the law, but I would think that would constitute a pretty good standing if this was the sole first and only entity.
Q: And you're familiar with the Equine Liability Act?
A: Yes.
Q: At your stables, do you post the Equine Liability Act on the door?
A: Yes.
Q: And you've seen the posting at Philmont?
A: As a matter of fact, I asked Pat about that. I did not see it.
Q: Did you go by the stable area?
A: Yes, I did.
Q: And do you recall —
MR. GREEN: We'll make this whatever the next exhibit is, but you'll have to make a copy of it.
(Exhibit H marked for identification.)
(Exhibit I marked for identification.)
(Exhibit J marked for identification.)
Q: (By Mr. Green) Do you recall seeing that posted?
A: I did not.

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Q: Do you recall seeing what I'll mark as Exhibit I posted?
A: No.
Q: I'll show you Exhibit J. Do you recognize the stable area right there?
A: Yes.
Q: And do you note the postings on the doors there?
A: If you tell me that's what they say, I guess that's what they say.
Q: You don't recall seeing them, though?
A: I did not pay — I did not walk up and read those.
Q: Let me show you Exhibit H. At least as far as you know, is that a proper information of the Equine Liability Act?
A: Yes.
Q: And it says right on there, "Behavior of equine animals means propensity to kick, bite, shy, buck, stumble, bolt, rear, trample, be unpredictable, or collide with other animals, objects, or persons." Is that right?
A: Yes.
Q: And you have a similar posting at your facility?

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A: Yes.
Q: And you believe that to be true; is that correct?
A: Yes.
Q: At the time you wrote your opinion on Exhibit A, did you have any information from BSA at all?
A: I don't believe so. Yeah, we did. We had the cavalcade information, I believe.
Q: Anything else?
A: I don't recall.
Q: Do you recall seeing anything, other than the Bergey's statements, that this horse broke away multiple times from the wranglers?
A: No. I guess maybe we ought to — no, it's in the Bergey's statement is where it's at.
Q: In opinion number 2, you state, "BSA did not provide oversight by supervisors to verify the hazards at the activity — at the activity were identified and managed by staff and/or supervisors."
What did you mean by that?
A: That's back to my statement earlier that the wranglers and those individuals that were there working on that cavalcade, as young individuals and starting to do the horse packing and those sorts of

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things, they need to have an awful lot of oversight and awful lot of hands-on experience in packing horses and doing this sort of thing to make sure — if you're going to involve the guests in this operation of saddling and unsaddling horses and working with everything, you've got to have all those hazards of putting packs on a horse, tying these ropes down, making sure the tarps are right, the horse is adequate, the horse is right, the horse is trained for this operation.
I don't expect the horsemen and the wrangler on the bottom end to be the individuals that are savvy enough to do all that. The supervising upper echelon staff needs to be the ones that are making sure that everything is in order and proper.
Q: Do you know what, if any, involvement there was by any supervisory personnel higher up than a wrangler and a horsemen?
A: Based on these statements, I did not see any.
Q: Do you know —
MR. CASEY: These statements being the Bergey statements?
THE WITNESS: Being the Bergey statements.
Q: (By Mr. Green) Do you know if, during the

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packing of the horse, the head cowboy was present at any time?

A: No, I do not.

Q: And do you know what the experience was with that particular horse, Spinner, as a packhorse prior to this date?

A: Today's date?

Q: No, no. The date of the incident?

A: No, I do not.

Q: Once again, your opinion in item number 1 and item number 2, which we've covered, was based entirely on what the Bergeys' statements say; is that right?

A: Yes.

Q: I would assume you also had no knowledge of how many wranglers were involved in the packing of the horse, or how many wranglers they had involved in working that horse on that date or prior to that date as a packhorse; is that correct?

A: Correct.

Q: Have you learned any different information since then?

A: Yes.

Q: What have you learned?

A: In several of the different statements,

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there is — well, let me just get them and read them. That'd be the easiest way. There's references to one or two times of use for the horse as a packhorse.

Q: There is that reference, yes. And it would be provided by BSA to Mr. Casey.

A: Correct.

Q: So you are aware of that information at this time, but you weren't on May 11, 2005?

A: No.

Q: Knowing that information, would that in any way change your opinion?

A: As to?

Q: Of either the first or second item.

A: No.

Q: The third opinion was, "The supervisors did not classify the suitability of horses for each activity, riding, packing," et cetera.

Once again, at the time, May 11, 2005, you had no information about what Philmont did in that regard; is that right?

A: Correct.

Q: So what was your basis of that opinion at that time?

A: The fact that you've got this horse — again, that three times he's reacted or caused a

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reaction, and again, the individuals that were the wranglers should not have had to deal with that type of a horse at this position. So that horse was not a suitable horse for packing at that point in time.

Q: Have you ever had a horse sit back during bridling?

A: Yes.

Q: Do you know what you called the first instance, Steve Bergey, he was having problems bridling his horse?

A: That was subsequent to the disturbance of this horse coming into the arena — or into the corral, as I understood it.

Q: So you think those were multiple occasions with Steve Bergey?

A: Correct. Well, it's actually this whole string of horses that were adjacent to the gate as they came in, as the packhorse was led in to the corral at that point in time.

(Exhibit K marked for identification.)

Q: Now, in Exhibit D, the drawing marked Exhibit A, corral — let me mark this next exhibit. Where is that on Exhibit K, which corral?

A: I believe that to it be this corral right here. No, take it back. This corral right here.

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MR. CASEY: Use a dark pen.

A: Wait a minute. Let me get this oriented in the right direction again. This is the barn.

Q: (By Mr. Green) The area that's marked open area and barn, and I'll tell you from —

MR. CASEY: Can we mark them in the same consistency that we marked them in Eric's and Sarah's deposition, A, B, and C, and D?

MR. GREEN: We will in a second. That'll be fine. Let me just —

Q: (By Mr. Green) Exhibit J is a picture of the barn area?

A: Correct. And that, in my mind, is this location right here.

Q: That says, "Open area barn"?

A: Correct.

Q: All right. Now, I'm going to mark these at the request of Mr. Casey.

MR. CASEY: Uh-huh, that's correct.

MR. GREEN: These markings, mark corrals as A with a circle around it, B with a circle around it, C and D also have circles around it. Are these the same markings that appear in the deposition of Sarah Shaddix?

MR. CASEY: And in the like exhibit for Eric

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out with the rain coat and that.
Q: What does sacking out mean?
A: Sacking out is a process that you utilize to get a horse accustom to — it's usually a horse that you're starting out. It's usually a colt that you're training to be comfortable with and learn how to accept all of the situations that are around him with the fight or flight mechanism of being scared to death and running off with the rider on his back. It's trying to utilize your ability to get on him, ride him, and work him, and use him.
Q: Now, this horse wasn't going to have a rider on its back, right?
A: Correct.
Q: Have you ever sacked out a horse that you're going to be using as a pack animal?
A: Definitely.
Q: Do you know — I know it sounds like a foolish question, but just for the record, what are the yellow slickers for for the participants?
A: Typically we wear them in the rain storm.
Q: And if you're out on the trail and it starts to rain, what do you do?
A: You first dismount your whole crew, put your raincoats on away from the horse, come back to the

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horse, step on him, ride off.
Q: While you're putting on these slickers, particularly if it's like here in New Mexico where you may have a little wind with the rain, what are they doing?
A: They're flapping in the wind.
Q: And you want to get the horse accustomed to that, don't you?
A: Yes, you do.
Q: Have you ever done that with your horses, both ride horses and packhorse, if you use them for both?
A: I do that with all of my horses. The question is the timing of when I do it.
Q: Do you know if this horse had ever been sacked out prior to this day?
A: I do not.
Q: And you just recently learned it had been used on pack trips before this date; is that correct?
A: Incidentally, is what it looks like to me. It doesn't look like he was a trained, standard, utilized everyday packhorse.
Q: You said putting the tarp on. Do you know when the horse was actually packed from the information you have?

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A: No, I do not.
Q: Normally, do you have the pack — the tarp all the way on the horse when you finish packing it?
A: Yes, you do. My question to you would be why are we packing this horse at this point in time?
Q: Well, you can ask the question. Do you know what the horse was packed with?
A: Apparently from the pictures, it looks like a set of empty panniers and a tarp.
Q: Do you know if there's any weight in the panniers?
A: I believe not. It means that would be a standard procedure for starting to train a horse.
Q: If the horse had been packed with weight previously, do you expect he may have had some weight in it before?
A: I could only speculate.
Q: What would your speculation be?
A: No.
MR. CASEY: Object to the form of the question.
Q: (By Mr. Green) You can still answer the question. So you don't think there would have been any weight on the horse?
A: I don't believe he was a packhorse of

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continual use.
Q: On the day in question, do you believe there was any weight packed on the horse, or do you have any information on it?
A: I do not have any information on it, other than the picture, and that's all I'm going by.
Q: In the picture, can you tell whether he has a tarp on or not?
A: In the picture — let me — if you'll hand that back to me, being you've got my one and only.
Q: Do I have your picture or — This one here. The blowup is in here. The blowup is in pack D.
A: In this picture, I believe we have a set of panniers with —
(Exhibit D-2 marked for identification.)
(Exhibit D-3 marked for identification.)
(Exhibit D-4 marked for identification.)
MR. GREEN: Wait a minute. Just to be clear so we'll mark that D-3. And while we're at it, we'll go ahead and mark the other two pages D-2 and D-4.
A: In this picture right here, D-3, the panniers are on the horse. There is what appears to be a — I would venture to say a cardboard box or something inside that, maybe a milk crate. The rain coat is draped over this horse's head in a bad

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A: I'm saying they were trying to put the bridle on.
Q: First problem, CI, we're looking at D-1, the area marked paren 1, next to Steve. Then it's your understanding that that occurred after the horses were saddled and bridled, and that's when they brought in the packhorse and Steve's horse sets back again; is that right?
A: I don't know the exact time that they're — I'm back in they're brushing, they're feeding, they're combing, they're saddling. I don't know what stage of the saddling process they're in. But yes, they're saddling the horses.
Q: So you don't know if there's actually a saddle and bridle on him at the time that this first problem, as you describe it, occurs; is that right?
A: Correct.
Q: It's your question, though, that this is after the horse sat back during bridling, does the horse have a propensity to sit back; is that right?
A: Correct.
Q: Do you know if the horse sat back at any other time?
A: No, I do not.
Q: What causes horses to sit back?

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A: I guess we could address that in problem solving. There are a multitude of problems.
Q: More than one thing can cause it?
A: It's typically a training problem, a propensity of a horse that's been sacked out tough when he was young. I don't know. There's lots of reasons for a horse to sit back.
Q: Will horses do it one time and not the next time?
A: Typically, if a horse is a sit back horse, he's a sit back horse for the rest of his life.
Q: Does improper bridling technique cause some horses to sit back?
A: Yes, it does.
Q: I assume you have no information about the bridling technique or bridling problems that Steve might have had?
A: No, I do not.
Q: Do you have any information whether Steve had any problems with horses, concern with a horse?
A: No, I do not.
Q: It is your understanding, though, that when this happened, Steve was not on the horse; is that right?
A: Correct.

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Q: He was next to the horse?
A: Right.
Q: When the incident that you've marked — you or someone else marked as 2, do you know what caused the horses to be spooked or agitated?
A: The horse, the other horse getting in the way, coming into them. The packhorse, Spinner, coming back down the line is what caused them to be spooked.
Q: What's the basis of that opinion?
A: The statements here and the witness statements.
Q: The witness statements from the Bergeys?
A: Correct.
Q: Do you know what caused Spinner to be spooked or cause some problem?
A: My bet would be that it was the britching is one of the things that I think led to a lot of this incidence. Britching on the pack saddle, when the horse is not accustomed to it, when it reaches down and grabs him by the hind legs, a lot of times the horse will suck up and buck. He'll either squat and try to rush forward because that is a natural learning propensity.
When you teach horses to lead, you use a butt rope and cause that horse to move forward.

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There's you another incident of teaching a horse to sit back is try to teach a young horse to lead and adversely work on his head. So they use a butt rope to teach him to come forward so the horse learns when something catches him around the butt to step forward.
Q: Do you know if Spinner had a butt rope on him?
A: I do not know how he was broke and trained, but I do know that a lot of times when I tried to convert a saddle horse to a packhorse, the britching is a big issue.
Q: You said it causes them to sit back?
A: No. It causes them to go forward. Butt rope moves a horse forward.
Q: Would you have expected the wrangler to be in front of the horse at this point?
A: Yes.
Q: And pulls on the rope and the butt rope encourages the horse to come forward?
A: No. This is a whole different scenario. This has nothing to do with this packhorse and the britching.
Q: Okay. What's the different scenario?
A: The butt rope is the teaching aide for starting and training young horses. You utilize it to

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we're all right here in this corner where this — where we've just brought this horse through.

Q: We're talking about the east gate corner, on D-1; is that right?

A: Correct.

Q: So you think the horse now was stopped and they were putting on a tarp when the britching got him?

A: I just wrote that down because that is in here. I do not, other than in this statement of witness, know that there was or wasn't a tarp on that horse. I don't have it in a picture. I don't have anybody else saying anything about it. It's, you know, did we turn this corner and are we putting it on? I don't know.

Q: Would you agree that in order to be putting on a tarp, the horse would have had to have been stopped at some point?

A: Depends how gentle that horse is. We may be being pretty cowboy right there.

Q: You mean putting the tarp on as the horse is walking along?

A: As the son of a gun is bucking along and jumping all around.

Q: So this B on second problem, one of the

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reports references putting a tarp on it, and then he breaks loose and runs to the herd; is that right?

A: Correct.

Q: Now, you say, "The wrangler tells the kids to get off the fence, and James Bergey, Jr., says, 'Run to the center of the arena.'"

Was it your belief that the arena they were talking about was this arena or this side? This arena, which would be —

A: Corral —

Q: Corral A versus corral B on Exhibit K?

A: No. I'm assuming that they were being told to run to this one. That's why I made the statement, "The safest place for these individuals is on the fence or over the fence."

Q: If the horses are moving around, do you think that they should be on the fence — if the horses are tied to the fence and moving around, do you think they should be on the fence?

A: Hopefully, that's — you're using that for a tie fence. That should be a very solid structure.

Q: Is there anything to make you believe that this fence, Exhibit M, is not a solid structure?

A: So that's why I would put the kids on top of the fence or over the fence so that they're out of the

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way of the horses, not on the ground, not being exposed to the danger of those horses jumping back and forth on those ropes trying to avoid this horse.

Q: Have you got anything where the wrangler told them to go on the other side of the fence, what would be corral B just across from the horse?

A: The only issues I read in here was for them to come off the fence into the corral.

Q: And you assume that was corral A?

A: Correct.

Q: You said there was a question about the age of the horse, the physical problems with the horse. Did you have any information on that?

A: That was just a question for myself to determine whether this — at that point in time, I did not know the age of this horse. Was he — I was assuming at that point in time that he was a young horse and a bronc.

Q: What do you mean by a bronc?

A: He wasn't — well, he hadn't been trained, hadn't been — I thought we were bringing a horse into the pack string. I didn't realize he had been a saddle horse.

Q: And that he had been used for many years as a saddle horse. Now you're aware of that; is that

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correct?

A: Based on your statements from your interrogatories or whatever it was.

Q: In terms of the, as you call it, shakedown ride, what was your understanding was going to occur that afternoon?

A: That afternoon, the way I understand and interpret everything was we were — these individuals are going on this trip. They're going to be out for multiple days. They're going to be expected to participate in and work with these horses from setting up camp to saddling horses, unsaddling horses, doing the whole nine yards.

So at that point in time, the staff is evaluating the capacity of these individuals to work with them, to help them, to do this trip. All attention needed to be set up on being able to decide how much capacity and ability these individuals have to take this trip, work with this trip, move on with this trip.

And they needed to be devoting their full attention to evaluating the riders after they got the horse — all the way through — from the time they started working with the horses until the time that they went out and rode — and rode the short ride

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naturally going to go back to the herd for safety.
Q: Are herds used to seeing other horses coming up to a herd?
A: Normally, in a docile, general, "Hello, how are you" manner, not flying in there scared to death.
Q: Scared to death meaning?
A: Bucking, running, coming back into the bunch.
Q: The horse that's coming in, you mean, is scared to death?
A: Correct.
Q: Other than the opinions you express in this November 17th letter and which you've talked about today, do you have any other opinions that you've now developed with regard to this case?
A: I don't believe so. I think we've covered everything that I've come across or thought to or the opinions of — I mean the testimony of Eric Perry and that.
Q: Let me ask this question then. Based on anything you've learned since November 17th, 2005, has it modified or any way changed your opinions as expressed in your letter of November 17th, 2005?
A: No. I still believe there was problems with the operation.

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Q: In the operation, or the specific horse?
A: The operation should have changed the program as this horse indicated there was going to be a problem. The staff, the supervision, the training, all that of the individual should have captured that and realized that this horse was going to need to be handled differently. They should have foreseen that he was going to come back and cause a problem.
MR. GREEN: Do you want to take a short break? I think we're about done.
(A recess was taken.)
Q: (By Mr. Green) When Eric Perry — Spinner pulled away from Eric Perry, what was your understanding of what Eric was doing?
A: Getting on his horse.
Q: Do you believe he was already mounted or not when he pulled away?
A: I don't have an idea.
Q: Do you believe that Eric was moving away with Spinner, or they were still stationary at that point?
A: I don't have any idea.
Q: Do you have an opinion on what caused Spinner to bolt at that point?
A: No.

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MR. GREEN: That's all the questions I have.
MR. CASEY: Thank you. Just a few questions.

EXAMINATION
BY MR. CASEY:

Q: You just received copies of Eric Perry and Sarah Shaddix' depositions?
A: Correct.
Q: Have you had a chance to read them in detail?
A: No, I have not.
Q: Would your opinions change from anything you might glean in either one of those depositions, one way or the other?
A: Possibly.
Q: Would they stay the same maybe?
A: Possibly.
MR. GREEN: Object to the form.
THE WITNESS: I'm sorry.
MR. GREEN: That's fine. You can answer it, but I have to make certain objections just like Mr. Casey did earlier.
Q: (By Mr. Casey) So when you prepared the November 17th report — let me go back — let me have Exhibit A, B, and C, please.

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Exhibit A was a preliminary determination based on what you had as of that date, May 11, 2005?
A: Correct.
Q: Is that correct?
A: Yes.
Q: And Exhibit B on October 24th, these are just notes of yours that you created or what?
A: This was —
Q: You sent me a time line or outline?
A: Time line. And then looking at witness statements and other information, I was trying to piece this all together.
Q: And raised questions in your mind?
A: Correct.
Q: And then your opinion came out November 17th, 2005, of what you had as of that date?
A: Correct.
Q: So Exhibit B is not opinions. It's just questions that are being raised in your mind. Is that my understanding?
A: This is — is what I was trying to do was set the parameters of what had occurred and what the time line that it had occurred in.
Q: When you're saying that at Philmont the

November 17, 2005

Patrick A. Casey, P.A.
P.O. Box 2436
Santa Fe, NM 87504-2436

Re: Linda Bergey against the Boy Scouts of America
Report on Incident at Philmont Scout Ranch
July 7, 2002

Dear Mr. Casey,

I have had the opportunity to review the witness statements of the people participating in the Philmont Scout Ranch Cavalcade 702 on July 7, 2002. I have also reviewed the Complaint filed, the answers to that Complaint as well as the initial disclosures filed by your firm for your client as well as the defendant's initial disclosures. I have reviewed pleadings, statements of the witnesses, photographs, drawings, and statements of the investigation provided in the pleadings by the attorney for the defendant. I have used these as the basis for providing my opinion on the horsemanship activities of the wranglers and their actions on the day Mrs. Linda Bergey was injured, July 7, 2002. I have also studied these materials and have referred to trade publications and articles on horsemanship safety in reaching my opinions. on to determine what history the horse involved in the incident had prior to that day. I reserve the right to supplement this report should there be additional matters discovered in this case.

Having done as I said, I have reached my opinions which are made based on my personal back ground of being involved in ranching since a child and of my business of offering goods and services of horseback trail rides to the public for over 33 years. I am a licenced guide and outfitter for hourly rides, summer pack trips and hunting trips. I am licensed by the state of New Mexico in this trade. I am the owner-operator Terrero General Store and Riding Stables Inc., in Terrero, New Mexico. My resume is attached which lays out my credentials.

I have become familiar and have developed a time line in the Linda Bergey matter. It is my understanding and analysis of the factual basis and material procured by you or have been provided to you by the attorney for the defendant. That information and the exhibits is the basis on which I developed my opinions. I have reviewed the time line of events and they are as

EXHIBIT
C

follows.

When the guests first arrive at the stable area where the wranglers had already worked with the green pack horse. It was pack-saddled and tied to the fence. In my opinion this demonstrated a problem with the green pack horse. It appears to have been prematurely brought into the arena long before it would be used as they still had to conduct the orientation which would take some time. There was also a neglect in assignment of horses to riders in this Cavalcade. See, "Classification of Horse", Section PH-5, Standards and Guidelines for accreditation by the American Camping Association. The only classification is by height and weight of rider and whether they had been in a prior "trek." In the assignment of horse there is no criteria in any of the guest statements other than for height and weight. No mention of prior experience riding horses, except as to "trek" other than for guest to do riding on their own before the get to Philmont.

During the saddling and bridling portion of the program Steve Bergey's horse sets back when he is trying to bridle it. In my opinion either this horse has a propensity to set back or in the riding program bridling is not taught or supervised properly. See, Classification of Horses above. This shows a propensity to utilize horses not suitable to the operation for novice riders.

Earlier guests had been advised to watch out for the pack horse that caused the injury to Mrs. Linda Bergey. The pack horse spooked the guests horses causing Steve's horse to again set back and almost crush Ryan. In my opinion the riding program (saddling, grooming, bridling) regarding the spacing of horses on the fence was to close and allowed the interaction not only from the pack horse but between the guest saddle horses as well. Again, this demonstrates a neglect of proper horsemanship with regard to not only those horse but with the manner they were dealing with the packhorse. See, Commercial Trail Ride Guide (American Association for Horsemanship Safety).

Sara Shaddix (Head Wrangler), knowing this still asked another wrangler to bring the pack horse back into the corral with the guest and their horses. Sara Shaddix then instructs wrangler Eric Perry to take the pack horse to the other end of the corral. This is the same corral the guests were in. They took it out one gate and brought in by another. In my opinion the wranglers did not manage the hazard of the unruly packhorse as they brought the horse back into the same corral as the guest. (See, Supervision of Riding Staff A.C.A)

The wranglers then place a tarp and/or rain coat on the pack horse and lead him around in the corral. The pack horse breaks loose from a wrangler and charges into the guest horses. This is the time the packhorse ran into the children's riding horses jamming them in together on the fence. In my opinion this show that they did not follow the standards laid out in the Commercial Trail Guide, by Jan Dawson, President of American Association for Horsemanship Safety.

The wranglers are trying to train this pack horse for use as a packhorse. This is not the time to attempt training. If the horse was not working as a saddle horse due to behavior, Exhibit F" per Ben Vargas statement in Initial Disclosure of Defendant Boy Scouts of America, then that horse should have previously trained or had qualified staff and facilities to train this horse away from novice rider guests before attempting to introduce it to the trail rides. In my opinion, that was negligent conduct on the part of these wranglers. I do not believe that the wranglers were trained or qualified to handle the unruly pack horse.

The wranglers then move the pack horse from where it had charged into the children's horses that were tied to the fence, and move it to the next arena away from the guests. They then move the guests over into the same arena where they just move the pack horse. In my opinion after the horse's unruly behavior and actions, it should have been removed completely from the this trail ride to prevent putting the guest at risk of harm.

In the second arena, Sara Shaddix started to work with the guests on riding skills and evaluating the guests abilities. They were riding in a circle. However, at the same time a wrangler, possibly Eric Perry, is working with the pack horse. In my opinion the staffing for the 15 riders was inadequate. According to Trail Ride Safety - Rocky River Style by Mary Nelson, published out of the University of Texas, Austin, the proper ration is one senior staff member for every four participants. My opinion, based on my 33 years of operating trial rides, a minimum of one senior staff person for the maximum of seven riders will provide for proper staffing and control of the trail ride. This will also prevent harm or injury to your guests.

There was no spacing control between the riders' horses and this resulted in the incident with Betsy Bergey's whose horse is kicked by the horse in front of her causing her to fall off.

The third time the pack horse causes a problem is when Sara Shaddix instructs Eric Perry to get the green pack horse and bring it along on the shake down ride. The pack horse had a pack and tarp/raincoat which was not properly secured based on the statement witnesses. It was flapping as the pack horse was running. The improper tying of the pack/tarp (flopping in the wind) has an cumulative effect in scaring the horse more once it has spooked. In my opinion, this incident is caused by inadequate training, staffing and supervision of the wranglers on the proper manner to secure the pack /tarp or panniers.

The fact that the green pack horse broke away from the wrangler at the fence after it had been brought back into the corral in and of itself would not raise any concern as to the conduct of the wranglers. But, given that this horse had already been scared and had become unruly, and given its history per Mr.. Ben Vargas and Mr. Rod Taylor, it is my opinion that this was not an unexpected equine event. It was the result of careless conduct and poor judgement in allowing this green packhorse to remain with this group of riders knowing that it could bring harm to them because of what it had been doing and what it could do. It was foreseeable that what occurred to Mrs. Linda Bergey would happen because of the propensity of horses in situations as this green pack horse was into run to the herd. That is the horse had run to group with other horses which creates "flight or fight" reactions of the other horses.

In my opinion there may also be an issue with this pack horse as to not only the classification and previous training, but as to its age, physical soundness and well being that may have cause it to react as it did

I am being compensated at the rate of $150.00 per hour for my work on this matter. I have not testified in any other cases in the preceding four years.

Hugh H. Ley
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Terrero, NM 87573
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# Transcript of the Testimony of **Sara McGatha Shaddix**

**Date:** March 6, 2006
**Volume:**

**Case:** Bergey v. Philmont

Printed On: 3/10/2006

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DISK ENCLOSED

worked on a ranch before. Then I spoke with Bob Ricklefs, and he said, "Do you have horse experience?"

I said, "Yes." Gave him some details of that.

He said, "Just include a very detailed resume of all of your horse experience and send it with the application. We will look it over. You probably have a good chance because you do have experience. We hire people who have never worked with horses before and just teach them everything. But if somebody comes in already with knowledge, that's always a plus for us."

So I went ahead and worked up my resume and filled out the application and sent it in, waited, and then -- I don't know exactly when I got the contract and acceptance saying, "You have been selected if you would like to still do this job."

I had to think about it, because it was a big step to leave home and come out here to New Mexico.

Q. Had you ever been out here before?

A. No. It was something of a childhood dream to work on a ranch, but I never thought it would be possible. So when I had the opportunity, I couldn't pass it up. So I talked to my parents and some of my boy scout friends, and the boy scouts, of course, were "It is once in a lifetime. You have to do it."

After talking it over with my parents, I decided

to go for it. I did that. They sent a lot of the staff information, the handbooks, what you need to do and prepare for it. I went through that pretty closely, and that's about it.

Q. You got hired the summer of 2000?

A. Yes.

Q. What were your duties? Let me go back a second. Tell me about the horse experience that you told them you had.

A. I started taking lessons.

Q. I suppose horsemanship would be a better word.

A. I started taking horseback riding lessons which included general horse care. We were responsible for catching and tying and saddling all of our horses, and then we learned how to ride as well.

Q. This was in Ohio?

A. In Ohio.

Q. What type of horsemanship was it, English riding or what?

A. Western. My first set of lessons was when I was eight, and I just never stopped. I kept going from there. That was kind of a pleasure riding. They did a lot of trail riding there. I was more interested in learning the mechanics and maybe showing, and I really liked English and jumping. From there, I found another

instructor who specialized in hunter jumper. So I went to her and started taking lessons there. At the same time, I actually worked at the other stable leading pony rides.

Q. The Western stable?

A. Yeah. I led pony rides for little kids. Then I helped people get on and off for trail rides. As young as I was, I was probably ten or eleven. I wasn't old enough to really lead a trail ride at that time, but they let me help saddle horses and get people on and off and things like that. So while I was working there, I also took the English lessons and did a little showing. I did some small horse shows there. They were hunter jumper.

From there, I probably did that until I was about 14 and then fell off because I got into high school. I only took a few lessons a year. I didn't ride as consistently. I did lead trail rides once I was old enough.

Q. Let me stop you for a minute. When you say you took a few lessons a year after you were 14, was that also for English riding and Western?

A. Just English.

Q. Can you tell me the difference between English riding and Western riding?

A. A lot of the basic horsemanship principles are the same. It is mostly a difference in equipment that you use and the purpose of the riding. A lot of Western riding came from the cowboy and their saddle and their style is what suited cowboy work.

English stems a little more from Europe, and it is almost a little bit more of a classical form of riding. They focus -- this has changed a little bit more in Western. Right now there's so many disciplines in both where you use the same principles, but in general, like English is a little bit more technical. You really focus on how to move every part of your horse and how to really work with it. Then it involves jumping. The English saddle is meant for jumping.

Q. More knee control?

A. Not a lot. It is still a lot of the same principles. Western horses tend to be ridden with looser reins. It has a little bit more of a weight and body control. English -- they still use the same principles, but one is more than the other. In English, you tend to be a little more forward. You have a tighter rein on your horse, and it is -- it is just a little different. Again, the basic principles.

Q. Basics are there, just subtleties as you get more progressed into the training?

Q. Is Ponil north of Cimarron?
A. Yes.
Q. I keep getting confused. Let me mark Exhibit 7, if I may, which is a diagram of the Cattle Headquarters. You want to review that?
A. Yeah.
(Exhibit 7 marked.)
A. Okay.
Q. Let me just ask you quickly. On Exhibit 6, that's your signature on the line that says "accepted by"?
A. Yes.
Q. So you accepted employment. You get there a week before everybody else does. You start working the horsemanship aspect of a horseman?
A. Yes.
Q. I've handed you Exhibit 7. Can you mark the approximate north location compass on that?
A. With an arrow or N?
Q. With an arrow and we will put a cross on it.
MR. GREEN: You mean, north direction.
MR. CASEY: Yes. What did I say?
MR. GREEN: North location.
A. That's north.
Q. (By Mr. Casey) Put an N in front of your arrow?

A. Yes.
Q. Put a cross through the arrow shaft.
A. (Witness complies.)
Q. That gives us the fact that where you are is west and behind you would be Tooth of Time?
A. Yes.
Q. And to the east would be the plains, grasslands that are probably burning still. Is the Cattle Headquarters, Exhibit 7, where you did all of your work when you got back the summer of 2002?
A. Yes.
Q. And who was assigned to work with you?
A. In terms of supervisors?
Q. In terms of the wranglers.
A. At that point, everybody works together. You don't have anybody specific.
Q. So the -- as I understand it, the horsemen get there first?
A. Yes.
Q. Then the wranglers come about a week later?
A. Yes.
Q. And then you-all start working together?
A. Yes.
Q. Taking the stock in and starting getting them climatized to summer riding?

A. Yes.
Q. Taking the ones that have been pasturing over the winter and doing what with them?
A. Bringing them down and riding them and getting them ready for the program. All the horses need to be shod. We are also responsible for putting shoes on them.
Q. Do you become the farriers?
A. Yes. As part of the certification, you are required to learn how to shoe.
Q. Is there a supervising farrier at that point, or if the shoe fits, wear it?
A. No. The bosses are there. They are the main bosses. There are also three other farriers there that are somewhat independent, but if you have a question, you can always ask them.
Q. So you guys are doing all of that?
A. Yes.
Q. When did you start off with your first cavalcade?
A. I can't tell you the exact date, but it was in the beginning of June. Usually around June 8th is about the first time.
Q. As I understand it, they last about nine days roughly?
A. It is eight days. The participants are actually

there for eight days.
Q. So in June, how many cavalcades did you do?
A. We would do two.
Q. Two in June?
A. Two.
Q. And did you have occasion to use Spinner --
A. No.
Q. -- in those two cavalcades?
A. No.
Q. Had you seen Spinner at all in those two cavalcades in June?
A. No.
Q. Where was Spinner being kept? Do you know?
A. From what I understand, he was at Clarks Fork, but I wasn't working there so I don't have any interaction with him.
Q. When Spinner was at Clarks Fork, had you heard of any problems with him up there?
A. No.
Q. Did you hear of any problems with him after the incident with Linda Bergey?
A. No.
Q. You never saw any reports of Spinner being problematic at Clarks Fork and that's why he had been shifted down here?

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A. No. I learned about it just a couple of days prior to this cavalcade.
Q. That he had had problems up there?
A. That he wasn't working as a trail horse so they were going to try him as pack.
Q. Did anybody say that this was the first time that Spinner had been used as a pack horse?
A. No.
Q. They just said he's being moved over here to be used?
A. Yes.
Q. Do you remember who said that?
A. No.
Q. Did you have any other knowledge of Spinner before July 7th or when he was moved down?
A. No.
Q. How soon before the July 7th accident with Linda Bergey had you first seen Spinner or become aware of him being part of your string?
A. I saw him the day before.
Q. That was the first time?
A. Yeah.
Q. Did you have any issues when you saw him?
A. No.
Q. You just saw another horse out there?

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A. Yes.
Q. Wasn't doing anything?
A. No.
MR. GREEN: Yes.
A. Yes. I'm sorry. No, I didn't see him doing anything.
Q. (By Mr. Casey) July 7th, was that the first day of the participants in cavalcade 706-CX-02?
A. That's their second day.
Q. What did they do the first day, the 6th?
A. They did their check-in and medical rechecks, a lot more of the administration part of it.
Q. They weren't in the Cattle Headquarters area?
A. No.
Q. That was all, "Welcome to the camp. We want to make sure you aren't going to give us strep"?
A. Yes.
Q. Did you meet the participants that day?
A. Yes.
Q. You told them, "I'm going to be the horseman and Eric is going to be the wrangler"?
A. Yes.
Q. If Eric doesn't obey me, I will take care of him?
A. Yes.
Q. Tell -- let's go to the 7th of July then. Tell

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us what time you approximately started in the morning and what your procedure was to get the participants going on the cavalcade.
A. The participants got up and ate breakfast on their own, and they were instructed to come into Cattle Headquarters at 8:00 o'clock. That's when they first arrived. From there, we went into our demonstration on teaching them everything they were going to need to use and know during their cavalcade.
Q. Where did you get that?
A. In corral -- actually, it doesn't have a letter.
Q. What I have done is I have marked three corrals, A, B, and C and you are doing it in another corral?
A. Yes.
Q. Let's mark that D.
A. In corral D is where we did the demonstrations.
Q. What was the demonstration?
A. It included everything that they were going to do on a daily basis with their horses. So we taught them how to approach a horse that is loose, how to catch it and put a halter on it, which is the piece that goes around their head, how to lead it, how to brush it, how to move around your horse safely, how to tie your horse, how to saddle and how to ride.
Q. That was done in corral D?

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A. Yes.
Q. That was the morning of the 7th?
A. Yes.
Q. What did you do in corral C with the participants and/or horses?
A. Corral C, we actually never did anything in there other than walk through it.
Q. Okay. To pick up their tack?
A. Yes.
Q. Pick up that stuff and move it over to corral D?
A. No.
Q. Corral D, they are just halters and grooming?
A. There's actually just us and one horse in there doing demos.
Q. And the participants are standing around looking at you?
A. Yes.
Q. Then when you completed that process in corral D, what did you then do?
A. We walked through C, area C to the barn and got them halters. Each participant got a halter for their horse. Once everybody had those, we came back to corral B where they waited in this alley here.
Q. The north/south alleyway, between corral D and corral B?

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A. Yes. There are horses in corral B, and we didn't want them standing with the horses. We left them in this empty --
Q. Alley?
A. -- alley. Thank you. From there, we went one on one, so Eric would take one person, and I would take one person. We would enter in here, and again we're asking them about their experience. "Are you comfortable riding?" If they had experience, "Are you comfortable riding a more energetic horse?" We worked on pairing them up. We stayed with them the whole time they were in there, helped them catch their horse, get the halter on, and then also help them lead it through to corral A. Corral A is where they tied their horses.
Q. Now, Mr. Perry told us that they were tied to a post?
A. Yes.
Q. And as we determined, it was fence post?
A. Yes.
Q. Tell me about the fence post tying of each horse. Are they tied together, spaced out? What are they doing there?
A. We tried to space them out every other fence post and keep them out of the corners. You don't ever want to tie one in a corner. As we led them in, we would

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tell the first person, "You can tie it here." We would help them tie it up. Then the next person, we would lead them in and say, "You can tie it here." And then we also gave them brushes.
Q. "Here" meaning corral A?
A. Yes. We would also have brushes for them so that while the rest of their crew was getting their horses, they could go ahead and brush their horse in corral A and help each other tie the knot.
Q. That's what was going on?
A. Yes.
Q. Did that happen before lunch?
A. Yes.
Q. How long did that process last there?
A. Just the catching of the horses?
Q. Catching, moving of the horses over to corral A to the completion?
A. I don't know for sure. Approximately 30 minutes.
Q. What did you do in corral A?
A. Once everybody had their horses caught and brushed, as a group, we came back to the barn and got their tack. We assigned it based on rider and horse, and then they were instructed to take that back to their horse.
Q. They carried it over there?

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A. They carried it over and they could go ahead and put their saddle pad on. Once they got that on, they had to wait until everybody had their saddle pads on. Once everybody had that done, then we went to the saddles, everybody put their saddles on.
Q. Was Spinner involved in being in corral B at any time?
A. Not while we were there.
Q. How about in corral A?
A. No.
Q. Did you have any problems with Spinner in corral A?
A. No.
Q. Do you remember having to move him out of there and instruct somebody to move him out of there?
A. No. They walked him there, but that's it.
Q. When he walked through corral A, did you see the other horses react to Spinner?
A. No.
Q. They didn't get spooked or anything like that?
A. No.
Q. Out of corral A, then, Spinner, according to what you are telling me, was not in that corral at all?
A. No.
Q. Where did you first see Spinner that morning?

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Actually, I assume we are still in the morning?
A. Yes. When I first saw him, he was down in area C.
Q. Had he caused any problems over there to your knowledge?
A. No, not to my knowledge.
Q. How about in area D, anywhere near?
A. No.
Q. How about in area B?
A. He wasn't there when I was there.
Q. How about moving him into the roping arena area?
A. I don't know if he had any involvement in it, but when he was being moved here --
Q. This is from the gate through the roping area?
A. Yes. They all got spooked. I don't know what spooked them, but he was also spooked in that.
Q. You don't have any idea what happened there?
A. No.
Q. Did anybody have an incident, any of the participants have an incident at that point?
A. No.
Q. Where was Spinner then placed, to your knowledge, in the roping arena?
A. He was walked around, and I don't know if he was tied or just continued to be walked around.

Q. Who was doing the walking?
**A. I don't know.**
Q. Was Eric involved in that?
**A. No.**
Q. Where was Eric?
**A. He was with me helping the participants get saddled and ready to go.**
Q. Do you know if any time Spinner was tied up on the north fence line of the roping arena?
**A. I don't know.**
Q. Let me show you a photograph.
MR. CASEY: I think you've seen this, Al.
**A. Yes.**
**(Exhibit 8 marked.)**
Q. (By Mr. Casey) We will mark that Exhibit 8. Can you tell me if in Exhibit 8 you can identify Spinner anywhere in there?
**A. Yes. He is in the middle right-hand side.**
Q. Can you put just a little arrow up to him and put Spinner right underneath?
**A. (Witness complies.)**
Q. Thank you. Then your initials if you will.
**A. Yes.**
Q. SS?
**A. That's my current name.**

Q. Do you recognize Linda Bergey in this picture?
**A. Yes.**
Q. What's the name of the horse that she was on, if you know?
**A. I'm not sure. That looks like Riff-Raff but --**
Q. Riff-Raff was the one that was involved with the Betsey Bergey incident?
**A. Yes.**
Q. Was that the same horse?
**A. That's not the same horse that Linda Bergey was riding, but that horse looks like Riff-Raff.**
Q. Put a little "Riff-Raff" thing underneath here. Right here is fine.
**A. (Witness complies.)**
Q. She's holding that horse?
**A. Yes.**
Q. What horse was she on? Do you remember?
**A. She rode Romeo.**
Q. And your initials.
**A. (Witness complies.)**
Q. Thank you. Now, in this photograph, Exhibit 8, Spinner appears to be tied to the north fence line; does he not?
**A. He doesn't appear to be tied to me.**
Q. He's somewhere near the north fence line?

**A. Yes.**
Q. This object here, is that the round pen?
**A. Yes.**
Q. That's identified in Exhibit 7, as well. So Spinner would be somewhere off in this area?
**A. Yes.**
Q. This area that we've marked just an "X" and point an arrow to it and say "Spinner." That's roughly an estimate. It is not absolutely accurate; right?
**A. Yes.**
Q. "Spinner in photo," put that so we know.
**A. (Witness complies.)**
Q. That way we know exactly what that means. Okay?
**A. Okay.**
Q. Can you tell me where the gates are in the round -- in the roping arena? There's a gate here for sure in the northwest side; right?
**A. Yes.**
Q. What other gates are in that arena?
MR. GREEN: Northwest of what?
Q. (By Mr. Casey) Northwest corner.
**A. Of the arena. That would be southwest.**
Q. Southwest corner. Thank you. I don't do real estate.
**A. Would you like me to mark them on here?**

Q. Yes, please. Put a little box and lines through it and put "Gate."
**A. (Witness complies.) There are multiple gates. There's a gate in the back, but it doesn't go to a pasture.**
Q. It just goes out?
**A. It goes to a catch pen for cows. Do you want me to mark that?**
Q. Just mark it. It wasn't involved in this at all?
**A. No.**
Q. Somewhere up in here is where the roping box is for the team ropers?
**A. Correct.**
Q. Put a little rectangle and put "Roping box."
**A. (Witness complies.)**
Q. Did you ever see Spinner with a sticker over his head?
**A. Not that I recall. I mean, I see it in this picture, but I don't remember that.**
Q. Let me hand you a blowup of that picture that's blurred. We'll see if that's, A, Spinner, and --
**A. Okay.**
Q. I will hand you that Exhibit 9.
(Exhibit 9 marked.)
Q. Let me hand you Exhibit 9, which purports to be a

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blowup of this picture right here where you've marked on Exhibit 9, Spinner?
A. Yes.
Q. Does that identify Spinner better for you on 9?
A. It looks the same.
Q. It looks like him?
A. It does look like him.
Q. At any time, did you see Spinner with that slicker over his head or yellow poncho, whatever it is?
A. No. I was very focused on the participants.
Q. You weren't really paying attention to Spinner?
A. No.
Q. Do you know who the fellow in the black hat was that was handling him?
A. I do not. I can't identified it from these pictures.
Q. You don't know who it was, fellow employees that wore a black hat?
A. No.
Q. Eric said he was wearing a light-colored hat. Is that correct?
A. I don't remember.
Q. Were you wearing a hat?
A. Yes.
Q. What color?

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A. I don't know. I don't remember.
Q. In this photograph here, there's three women apparently. Is that Riff-Raff that Linda Bergey is on there?
A. Right here?
Q. Yes.
A. No.
Q. This is Linda right here in the red shirt.
A. That's not Linda.
Q. That's not Linda?
A. No.
Q. Who is that?
A. The one guy's daughter. I don't remember her name.
Q. Linda had the black T-shirt. You are right.
A. No.
Q. That's not Linda?
A. No.
Q. We don't need that. I don't know why I thought that was Linda looking back there.
MR. GREEN: I just thought you were trying to mislead the witness.
MR. CASEY: Not in the least bit. Off the record.
(Discussion off the record.)

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Q. (By Mr. Casey) Do you have any recollection at all of seeing Spinner with the yellow slicker over his head or blinders or anything like that --
A. No.
Q. -- that day? Do you have any recollection at all of Spinner prior to the incident with Linda Bergey?
A. I remember seeing him tied and led around, but that was it.
Q. Did you at any time give anybody orders to remove Spinner from the arena before the Linda Bergey incident?
A. No.
Q. From the arena, roping arena?
A. No.
Q. From arena that we've identified as A in Exhibit 7?
A. When all the horses spooked and -- at corral A. I told them to take him to the arena and shut the gate. That would be the only time I said to take him somewhere.
Q. Had they brought him through -- A or was he already in there with the other horses when he got -- spooked with horses?
A. He was being brought through. He never stayed there.
Q. Do you have anybody take him out and tie him

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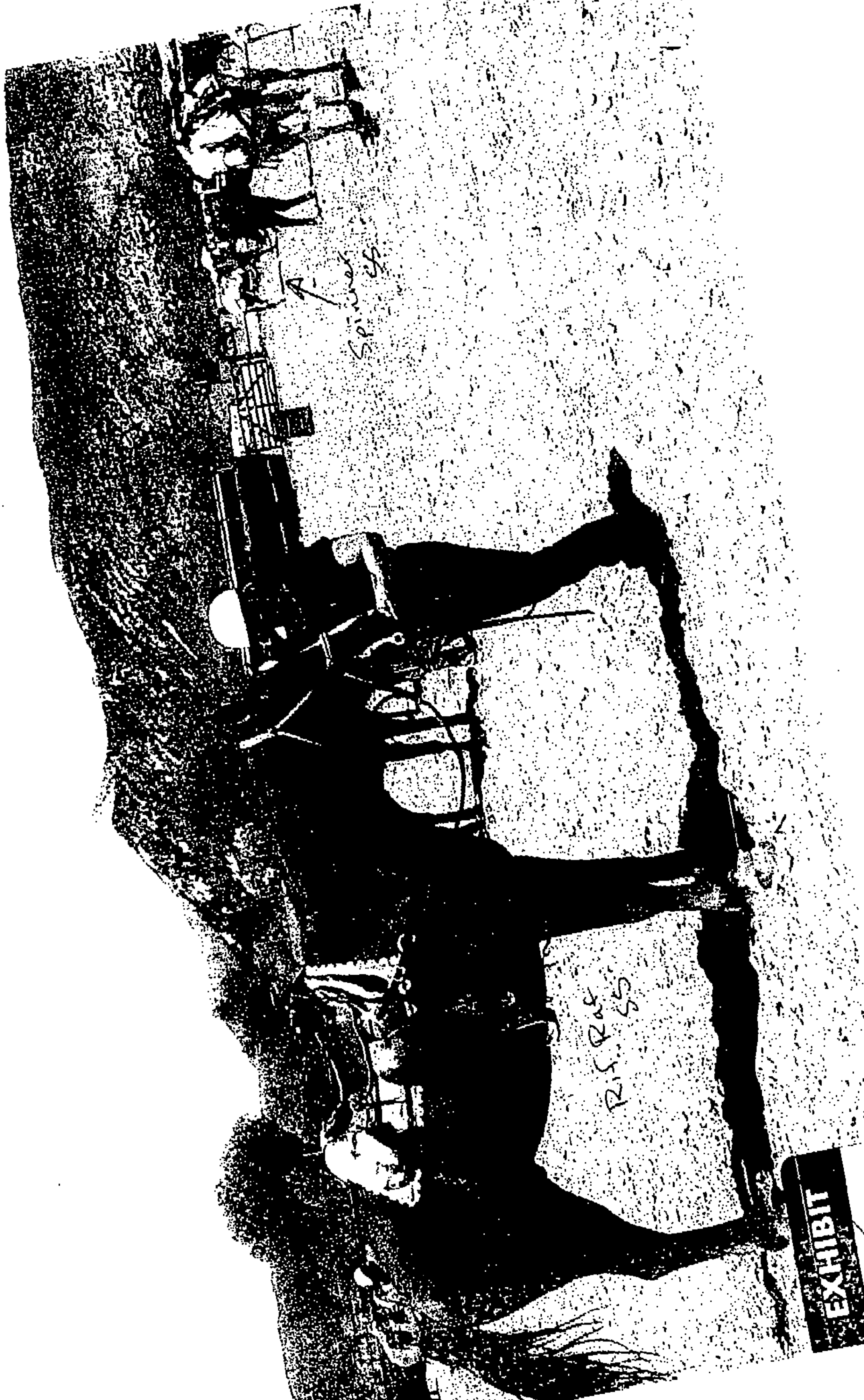
somewhere else other than in the roping arena?
A. No.
Q. Do you have any recollection of an incident where Spinner had brushed up or hit the horse that Steve Bergey was on and made it set back?
A. No.
Q. Do you have any recollection of any incident involving the four girls that were in there where Spinner had spooked those horses and they were getting rattled, the girls were on the fence and got kind of wild there for a minute?
A. I remember looking around and seeing the horses spooking. I told them to get over the fence so that they were on the other side from the horses in case -- I didn't want them to get hurt with the horses spooking.
Q. They were on the ground and you told them to get on the other side of the corral fence?
A. Yes.
Q. Not the wire fence, but the corral?
A. That was the safest place for them, yes.
Q. Do you remember what caused them?
A. No.
Q. That's the incident you are talking about saying, "Move that horse over to the roping arena," Spinner?
A. Yes.



EXHIBIT

# Transcript of the Testimony of **Eric Perry**

**Date:** March 6, 2006
**Volume:**

**Case:** Bergey v. Philmont

Printed On: 3/10/2006

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the horse camps.
Q. The music because you are a musician, also?
A. That's correct.
Q. When did you start working at Philmont?
A. The summer of 2001. It was in June, right after I graduated from high school.
Q. You went to Beaubien?
A. Yes.
Q. That's a camp?
A. Yes.
Q. Like Ponil and headquarters --
A. Clarks Fork, Ponil, and Beaubien are the three cattle camps that they have.
Q. Do you recall when you started, the day you started working the 2001 season?
A. I don't recall.
Q. Does May 13th ring a bell?
A. 2001?
Q. 2001.
A. May 13th, that sounds accurate.
Q. You were initially started to schedule earlier, but there was some delay?
A. That's correct. My graduation got in the way.
Q. When you applied with Philmont, you sent them a resume; did you not?

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A. That's correct.
Q. Let me hand you what -- I believe -- we will mark that as Exhibit 2. That was your resume that you handed into them for employment the summer of 2001?
(Exhibit 2 marked.)
A. That's correct.
Q. When you first came to them, you indicated you didn't have much horse experience. What experience with horses did you have at that point by May of 2001?
A. I had intermittent experience.
Q. Tell me about that.
A. My parents live in Rockville, Virginia, which is west of Richmond, and the accompanying neighbors have horses. I was pretty interested in horses at that time, and just general maintenance. I like to work outside a lot. I ended up doing work in some of their stalls and cleaning the stalls out, and gradually, I got to where they let me ride the horse occasionally.
Q. Had you had any formal riding lessons up to that point?
A. I had a few.
Q. Tell me about that.
A. I started off taking some English lessons, and I took some of those very intermittent. I spent some of my summers as a youth in Upstate New York with one of my

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cousins, and she had riding lessons at that point. I did the same. That was throughout some of the summers as a youth. So I enjoyed that.
And then during high school, I wasn't able to take any lessons, and I didn't go up to Upstate New York. So the only experience I had was with some of that limited exposure at one of those neighbors.
Q. Before high school, you went --
A. Before high school, I went to the New York area.
Q. That's when you took the riding lessons?
A. Yes.
Q. Was that English, also?
A. Yes.
Q. Had you done any Western riding at that point?
A. No.
Q. Throughout high school, it was just based with the next-door neighbor having horses?
A. That's correct.
Q. You had an employment there as cleaning out the stalls?
A. I didn't have any employment. There was no standing agreement.
Q. You'd just go over and do it?
A. That's correct.
Q. Being a good neighbor?

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A. Just for my benefit, mainly, and help them out.
Q. Did they give you any instruction on riding horses?
A. Very little.
Q. It was strictly riding horses, I gather?
A. As opposed to --
Q. At that point, as opposed to working a pack horse?
A. That's correct.
Q. A buggy horse, a rodeo horse?
A. Strictly horseback riding.
Q. Just pleasure riding?
A. Correct.
Q. You worked the summer of 2001?
A. Yes.
Q. Describe some of your duties. You gave me an idea of some of them. Tell me what you did.
A. As a program counselor, your duties included maintaining the hiking treks that came in and presenting a Western lore program.
Q. What does that mean?
A. Some of the activities that were done as a Western lore, one of the main ones was a camp fire that was a Western camp fire, included music and camp fire stories, stories of cowboys, things like that.

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Another key element of the Western lore program was the chuck wagon dinner where scouts would come in from their trek and instead of eating a trail meal of dehydrated food, we would fix biscuits, cobbler, and beef stew at the chuck wagon area.

Q. Keep talking, you might interest Mr. Green and I to go up to one of those.

A. Similar to what was thought to be like what a cowboy would actually eat when he was out on the trail. That was held for each trek that wanted to participate and come in.

Another opportunity was branding, and that was just where we had a branding fire, and we had branding irons, they could brand personal effects.

Q. Not live cattle?

A. No. So common thing to brand was like your boots or a pair of gloves, something like that.

MR. CASEY: Off the record.

(Discussion off the record.)

Q. (By Mr. Casey) Was that all at Beaubien?

A. That's correct.

Q. You didn't go to the other camps?

A. No, I didn't.

Q. Did you hang out with the wranglers that were dealing with the horses?

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A. All the time.

Q. Tell me about that, if you would.

A. I determined -- I mean, the week after I got there that's what I wanted to do when I came back the next summer if I was able to. I went ahead and performed all the duties required of me.

Q. Go ahead. Keep talking.

A. And I fulfilled my duties as a program counselor, but on top of that -- at Philmont, there is a lot of free time. I took my free time and spent it at the corral pretty much all the time.

Q. Did you help them with the horses over there?

A. That's correct.

Q. During that experience, did you have anything to do with regard to, say, pack horses?

A. No, I did not.

Q. It was all strictly just the riding?

A. I can't say. I cannot say if I had any experience or not. I can't remember that.

Q. As far as your work around the horses, then, was it more or less like helping them clean the barns, keep the tack in order?

A. At the beginning of the summer, I started off doing that. They started to give me more and more training. And the horsemen there at the time -- I don't

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remember his last name -- his first name was Brandon. He started to show me how to saddle a horse. This was in Philmont. The keeping of the Philmont standard, I guess you could say, the way they taught their entire horse program to saddle a horse, take care of a horse, feed a horse. And as the summer progressed, I just enjoyed it more and more. I ended up getting up with them every morning, helping them saddle up their horses before breakfast, taking care of their horses. I even went out as a -- basically as another participant on their dude rides. I would be on a dude horse with the helmet on, in the dude line, trying to get as much experience as I could.

Q. There are two questions I want to ask you, what you just told me. Tell me more about training. You said they were kind of training you. Tell me what kind of training they were giving you.

A. They were giving me -- showing me exactly what it was like to be a wrangler. They weren't giving me the responsibilities of a wrangler, but they were showing me, since I expressed interest and wanted to come back the next summer as a wrangler, they said, "This is exactly what you are going to need to know."

Q. That was probably with an informal training; right?

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A. That's correct.

Q. That did not track with whatever Philmont itself does to train a --

A. There was no formal training. I was not given any responsibility.

Q. So "Get your hands on it, get ready because maybe next summer you will come back and be one of us"?

A. That's correct.

Q. At any time during the summer of 2001 that you worked there -- I think you worked through August something, middle of August of 2001 -- did you do any studies or get any formal training from anybody at Philmont in a supervisory position with regard to handling of horses?

A. No.

Q. With regard to handling of pack horses?

A. No.

Q. Or pack burros, if you would, pack mules?

A. No.

Q. So you completed your summer, as you've described it. Is there anything that you have not told me about that particular summer of 2001 that you did? We did the music. We did the Western lore. We did the helping of the -- with the wranglers to kind of get a hands-on feel of what they did, saddle -- you learned how to saddle

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met the horse, saddled the horse called Spinner?
A. Yes, I had.
Q. Tell me what your history with Spinner was.
A. During the initial training and certification, I had ridden Spinner in the roping arena. I don't remember the number of times.
Q. As a riding horse?
A. As a riding horse.
Q. Did you have any problem with him?
A. No problem.
Q. Did you ride him with other horses?
A. I did.
Q. As if you would in a cavalcade?
A. I rode him as if I were riding in a trail ride line.
Q. Did you have any experience with Spinner walking fast or slow, getting out of line where you had to keep him in line?
A. I had no experience with him walking out of line. I had an experience where he would twist in line and so he would try to walk sideways. I found that that was uncomfortable, but not -- not unmanageable.
Q. So when did Spinner, to your knowledge, become a pack horse?
A. I don't know.

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Q. When you came to this particular cavalcade 706-CX-02, were you surprised to see Spinner as a pack horse?
A. No, I was not.
Q. Was it just normal course that he just -- no pun intended -- but he drew the short straw and became a pack horse for this cavalcade?
A. I did not know the reasons behind why he had become a pack horse.
Q. But that's the first time you saw him as a pack horse?
A. No.
Q. Had you seen him as a pack horse before?
A. Yes.
Q. What other -- at the other three cavalcades?
A. No.
Q. Where had you seen him as a pack horse?
A. I had seen him as a pack horse at Cattle Headquarters.
Q. When?
A. On one of the trail rides prior to July 7th -- July 06.
Q. With somebody else or with Sara McGatha?
A. With someone else.
Q. I think that was my earlier question. I may have

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misstated it to you. So he was used as a pack horse with maybe one or the other cavalcades prior to July 6 that you had seen him being used as a --
A. No.
Q. Explain it to me because I'm confused now.
A. Okay. He was utilized as a pack horse for a trail ride out of base camp headquarters.
Q. What is the difference between a trail ride and a cavalcade?
A. A trail ride is a two- to three-hour ride that our participants go on to have a Western lore experience, and they are taken out of any of the horse camps, including Cattle Headquarters. From Cattle Headquarters, they would take out trail rides from the Philmont Training Center. Spinner was packed as a pack horse sometime prior to the arrival of that cavalcade, and he was led by a wrangler or horseman. I don't know who he was led by.
Q. On another horse, with a rope on, so to speak? You have one guy on a horse here leading the horse?
A. That's correct.
Q. Not walking with him with a rope?
A. That's correct.
Q. Did you hear anybody talk about having problems with Spinner, either Cattle Headquarters or anywhere

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else at Philmont?
A. No.
Q. Had Spinner -- Spinner wasn't around the summer of 2001 when you were up there, to your knowledge?
A. No.
Q. If Spinner had caused problems at another camp, say Ponil, Clarks Fork, Beaubien, would that word have gotten down to Cattle Headquarters somehow?
MR. GREEN: I object to the form.
Q. (By Mr. Casey) If you know.
A. I don't know.
Q. When was the first time that you worked with Spinner?
MR. GREEN: As a pack horse?
Q. (By Mr. Casey) As a pack horse. You already told me you rode him; right? That was before July?
A. Correct.
Q. You had no trouble with him riding other than going sideways?
A. Correct.
Q. Did you report that to anybody, that he was riding sideways as a saddle horse?
A. When I rode him as a horse?
Q. Yes.
A. And he rode sideways? It is typical that Ben

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A. The south fence of the roping area. I had to lead Spinner basically in a circle which is a good practice when you are riding a horse. So you want to make sure that everything is situated. So I led him in a circle as I was going to untie my horse, successfully untied my horse, mounted my horse, and I was proceeding to walk a few paces on my horse with Spinner being led.
Q. And then what happened?
A. Then Spinner pulled back, and he pulled so hard that he gave me a rope burn across my left hand. He continued to pull back, and the lead rope on a pack horse is typically rather long. He pulled back very hard until I had no more rope in my hand, and the lead rope was dragging on the ground.
Q. His lead rope?
A. That's correct.
Q. If he's pulling back on the lead rope, why was it hanging on the ground?
A. He was pulling back, and I had the lead rope, and he pulled out of -- the lead rope pulled completely out of my hand. It came to the end of the rope. I got a bad rope burn as he pulled. He pulled very hard and very quickly.
Q. Then what happened?
A. Then he proceeded to bolt, which is to run at a

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very fast rate into the arena.
Q. Now, prior to your getting him off of the post that he was tied on -- you say post. Was he tied up on the west fence post --
A. No.
Q. -- that steel thing that you talked about, or is there a special post?
A. There's a special roping box. There's a special box with a metal box here, and he was tied to that.
Q. Is it blue?
A. It is red.
Q. The box is --
A. The box is blue. The horse boxes for team roping, they were painted red.
Q. On either side of the blue box?
A. That's correct.
Q. He was tied to one of those boxes, horse boxes?
A. That's correct.
Q. You untied him from there?
A. Uh-huh.
Q. How did -- that was the one and only time he had been brought into this arena, the roping arena and tied up there at that horse box?
A. To my --
Q. The best you can recall.

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A. To my recollection, that's where I found him when I was to take control of him. I know he was brought down to this arena by other wranglers. What they did, where they took him, I do not know.
Q. They didn't tell you about any problems with him before then?
A. No problems.
Q. Did Sara McGatha ever ask you to remove him from the arena?
A. No.
Q. Take him either out of corral A anywhere or roping arena?
A. No, she did not.
Q. Who had -- let me back up. I don't want to be confusing you or myself. When you were moving him, was -- this was after the Betsy Bergey/Rif Raf incident; is that correct? Am I wrong?
A. That's correct.
Q. I am wrong? I am correct in what I'm saying?
A. You are correct that I moved him after Betsy Bergey had fallen off her horse and was successfully back on her horse.
Q. That's when he broke loose from you?
A. That's correct.
Q. And went on into the arena, and he started

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bolting?
A. That's correct.
Q. At any time, did you put a slicker over his head?
A. No, I did not.
Q. While he was tied up on that post?
A. No.
Q. When you found him on the post, did he have a rain slicker on his horse?
A. No.
Q. Have you seen this picture with your attorney where there's a slicker -- first off, is that Spinner?
A. To the best of my knowledge, yes.
Q. Is that slicker over his head --
A. Yes.
Q. -- on this picture, which is Exhibit C?
A. To my knowledge, that is a yellow rain slicker over his head.
Q. Do you know who put that on there?
A. I don't know.
Q. Do you know who this wrangler is here, this cowboy?
A. I don't know.
Q. You didn't have a black hat on that day?
A. No. I had a white straw hat.
Q. Like you had in the picture?

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Q. He was tied?
A. Tied.
Q. Back by the -- on the roping box area?
A. That's correct.
Q. And then after the Linda Bergey incident, that's the only time Ms. McGatha asked you to remove Spinner from the arena?
A. She didn't -- I don't know if she asked me or not to remove him. I removed him from the arena.
Q. He was removed by you?
A. That's correct.
Q. And whatever -- whether she asked you to or you did it, that was the only time he was removed?
A. To my knowledge, yes.
Q. Had you seen Spinner before the Linda Bergey incident acting up in any way, either in the north/south alleyway to the west of corral A or in corral A or in the roping arena?
A. No.
Q. How about in the -- was he ever in open area C?
A. He would have been packed in this open area C. I did not see the packing, and I did not -- I was not aware of any time where he acted up.
Q. So you have no knowledge of anything that may have occurred in open area C with Spinner?

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A. Correct.
Q. How about open area B? Would he have been there -- corral B, I mean?
A. I don't know that.
Q. You didn't see him there?
A. I didn't see him in there.
Q. When Spinner was tied up here at the -- I'm going to call it the blue calf roping pen and they were bringing the other horses in there, did you notice any agitation by the other horses with Spinner or Spinner with the other horses when they came in the gate on the west side of the roping arena?
A. When they brought Spinner in from corral A into the roping arena, there's not enough clearance between that roping, the blue roping pen, as you call it, and this gate to bring horses in, have the horse tied at that post that I spoke about where he was tied and I retrieved him from. He was not there.
Q. So he was never there when the other horses were coming into the arena?
A. That's correct.
Q. Did you see the other horses in corral A irritated because Spinner was in here with them?
A. My focus, as I said before, was on the participants. I remember when Spinner was brought from

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this open area C, down through here and into the roping arena, as he's walking by, several horses did react as he walked by, and the term I would use was they spooked.
Q. Is this the incident with the little girls that had to jump up on the fence or something?
A. I don't remember exactly what happened there.
Q. You don't recall that?
A. I don't recall that.
Q. Do you recall any incident with Spinner causing Steve Bergey's horse to set back when he approached him, went by him?
A. I don't recall that.
Q. You don't recall or you just don't have any knowledge of either one of those incidents?
MR. GREEN: I object to the form.
Q. (By Mr. Casey) I'm trying to clarify. Is it a recollection issue or a no-knowledge issue?
MR. GREEN: He doesn't recall.
MR. CASEY: He can always remember later. That's the problem.
MR. GREEN: Answer the question the best you can.
A. I have no knowledge of that.
MR. GREEN: Still objection to form.
MR. CASEY: This sounds like a congressional

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hearing here.
(Discussion off the record.)
Q. (By Mr. Casey) Do you have any idea what caused Spinner to become spooked when you were getting on your horse and he pulled away from you?
A. I want to correct your thought there, your question.
Q. Go ahead.
A. I was already on my horse when Spinner reacted.
Q. When you were on your horse?
A. I was seated and I was in the seat. I have no idea what caused him to react like that.
Q. Had you ever experienced that with him before at any time?
A. Never.
Q. Was this the first time you had ever worked with Spinner, or had you worked with him before as a pack horse, before July 7th?
A. I don't recall.
Q. There wouldn't be any written record of that anywhere?
A. There wouldn't be any written record. I did see him working as a pack horse. I don't remember in what form, if I was leading or if I was visually seeing him, during that trail ride with the Philmont Training Center

# Transcript of the Testimony of **Lar R. Thomas**

**Date:** March 14, 2006
**Volume:**

**Case:** Bergey v. Philmont

Printed On: 3/28/2006

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wholly owned by me and my wife. So it's all construction related.

Q. The area of management of clean water, effluent?

A. No. Storm water management is probably a good way to put it.

Q. That's when you build something, you have a storage pond next to your building so that the water doesn't run in the street, like it's supposed to, into the arroyo, like it's supposed to?

A. Sort of an oversimplification, but you're on the right track.

Q. So the only expert areas you are working in are the Exhibits 10 through 12 or Exhibit 3?

A. Yeah, construction and agriculture.

Q. Construction and agriculture; nothing else?

A. That's what I to. I do other things, but that's all I do.

Q. I'm not going to tell your wife what those are.

(Recess taken at 1:47 and reconvened at 1:51.)

EXAMINATION

BY MR. GREEN:

Q. Just a couple of questions here. Mr. Thomas, you were present yesterday during the deposition of Mr. Hugh Ley, who is the expert for Plaintiffs in this case; is that correct?

A. Yes.

Q. And you heard the information upon which Mr. Ley has relied in formulating his opinions in this case; is that correct?

A. Yes.

Q. Based on the information and the testimony of Mr. Ley that was presented yesterday during his deposition, was there anything in that deposition or Mr. Ley's opinion that changes your opinion that Philmont or its employees was negligent in it action?

MR. CASEY: Let me interpose an objection. It's argumentative, pitting witness against witness. Go ahead and answer.

A. There is nothing in Mr. Ley's testimony that would change my opinions as indicated in my preliminary report.

Q. Based on the information that you received to date, including being present during Mr. Ley's deposition, is there any reason -- do you have an opinion of whether anyone at Philmont or the Philmont program was negligent in the training or supervision of Philmont employees?

MR. CASEY: You want to break that down? It got confusing. Do it over again. I think I know where you're going with it. I think the tail end of that was

the question, but the first part might throw it off.

Q. (By Mr. Green) Based on the information that you know to date, do you have an opinion of whether anyone at Philmont, Philmont employees, were negligent in the training or supervision of Philmont employees relevant to the claims of Plaintiffs herein?

A. I don't believe so.

Q. You don't believe they were negligent, or you don't believe you have an opinion?

A. I have an opinion. I do not believe they were negligent.

Q. You've already stated in your report that you do not believe utilizing the packhorse Spinner with these participants on the cavalcade on the day in question was in any way negligent. Is that still your opinion?

A. Yes. He was being a horse.

Q. Do you believe that the employees of Philmont, either supervisory personnel or the actual horsemen, Sara, Eric, wranglers, or any other wranglers, could have predicted Spinner's reaction in the arena which resulted in Linda Bergey's falling over on the day in question?

A. I don't believe they could have predicted that behavior at that particular point in time, because horses' behavior is entirely unpredictable, and you can

never tell what they are going to do. That was the purpose of the Equine Liability Act.

Q. Did you personally have any involvement in the development of the Equine Liability Act?

A. Yes. I was asked back in about '92 or '93 for input on that Act by at least one organization and a couple of legislators.

Q. Based on your knowledge, both as an attorney and being involved in the development of the Equine Liability Act, do you believe the claims of the Plaintiffs herein come under the provisions of the Equine Liability Act?

MR. CASEY: I'm going to object to the question on the basis that it's asking for an opinion that's reserved for the trier of fact.

A. I believe that the Equine Liability Act, as it is in its current form, protects these operators, meaning Philmont and their employees, from liability, and that the acts of their employees did not meet the exceptions enumerated in the Equine Liability Act.

Q. Are these opinions held to a reasonable degree of animal science and in this case based on your legal knowledge?

A. Yes.

MR. GREEN: That's all.

# Transcript of the Testimony of **Ben Vargas**

**Date:** April 4, 2006
**Volume:**

**Case:** Bergey v. Philmont

Printed On: 4/13/2006

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Q. That's the four of you?
A. Right. And then there's riding horses, which is -- wrangling horses and that --
Q. Who uses them?
A. That's our staff, horsemen wranglers. That's our staff. That's what they ride to do their jobs. Then there's trail horses that are just in line, single file line horses, and then there's cavalcade horses, and those horses are the ones that are gone for a week. They handle better than the trail horses. They run barrels on them, flag race, different patterns in the arena at the end of their cavalcade.
Q. Did you do any of that with that horse, Spinner, in particular, run barrels or anything like that in the arena?
A. Not personally, but I'm sure that he did get -- I know he got rode along with all the other horses, and in their riding, we ride them in the arena at a walk, at a trot. We ride them at a lope. We run the barrel patterns on them. They will go outside.
Q. Did Spinner do all of that?
MR. MARTINEZ: I don't think he was finished.
Q. (By Mr. Casey) You weren't finished?
A. Well, he got rode just like any other horse.

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There was no -- he was just a horse, just like anything else.
Q. All that happened between April when you purchased him and -- when did you run the first cavalcade?
A. Probably June 8th, 9th, 10th, somewhere in there. I'm not sure.
Q. Between April when you bought him and the first cavalcade, it was really just the permanent staff, the four permanent staff -- that being you, Rod Taylor, Chuck Ehlce, and Mr. Ricklefs -- and the people who are coming to work as wranglers and horsemen that summer worked him?
A. That's right. That's right.
Q. Okay. Then how do you assign horses to a different cavalcade?
A. Well, it is all through a riding process. We ride them. We -- those that were run the barrel pattern or those that will handle, that will do things that they are asked to, become cavalcade horses. Of course, we've got, you know, two cavalcades going on in the south country, two out of the north country, and the maximum is 15 riders per cavalcade. There's 30 horses there, plus six or eight or ten pack horses, plus five extra horses, five -- you know, extra riding horses and that

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many pack horses. So you've got two strings of probably 60 head of horses or better.
Q. How many of those are pack horses, pack animals?
A. Probably ten. Ten in each.
Q. Is there a reason why they are used as pack horses and not riding horses, trail horses or cavalcade horses?
A. There is. There's some of those horses that we buy that we see rode six, seven, eight times, and they don't respond like we want them to. They run off. They just don't seem to be fit for anybody to ride. So we try to make those the pack horses.
Q. Is that what happened with Spinner?
A. Spinner started out as a riding horse. I would say he was just a little bit antsy. He walked a little bit faster than a trail horse would. He would kind of like get to prancing and walk out of line, you know, just trying to get ahead of the horse. I guess, he would just get out of line. He just wasn't ready to be a trail horse.
Q. He had been a riding horse over at Nancy Burch's; hadn't he?
A. Well, that's what I understood, that they had been riding him.
Q. Did she report any problems to you when you

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performed him?
A. No, no. Even at that point, after we scattered, he still wasn't a problem horse. We realized that he probably needed a little work before you could put a novice rider on him, but like I said, he wasn't ready to be a trail horse. We didn't think he was ready to put a wrangler on him to do his work safely, you know, to -- you know, to -- he needed a pretty good solid horse.
Q. In the classifications that you are talking about, trail horse, cavalcade horse, wrangler horse, pack horse -- correct me if I'm wrong on this. I'm going to make some assumptions here. You tell me if I'm right or wrong. A trail horse is one that is pretty much really tamed out for riding day ride type of thing; is that correct?
A. Pretty much, yes.
Q. And then a cavalcade horse is one that's got a little bit more pep and spirit than a trail ride horse, but is not really going to be a working horse for a wrangler?
A. That's right, yeah.
Q. Anything else that elevates it to a cavalcade horse?
A. No. I'm not -- it could be that one of those cavalcade horses could be a wrangler horse, as well. It

is just that we have enough wrangler horses in the program.

Q. But they are --

A. They handle a little better.

Q. Better?

A. Like you said, a little more peppy. They handle better.

Q. Then the wrangler's horse is a real working horse? It is going to be a cutting for the cattle if you need that or herding the other horses, whatever?

A. Yes. Just basically herding other horses.

Q. More experienced horse?

A. Yes.

Q. And then the horses that you use for trail -- I mean, pack horses, tell me how you classify those.

A. Again, it's -- we see them rode. We ride them in the arena. It is a real -- you know, it is a small area, but they just don't respond. You know, you just don't feel that they are quite ready to put a beginner on, a novice rider or a wrangler. So we will take them and try them as pack horses. And it is not a demotion. It is just --

Q. They get the same pay.

A. Part of the qualification, they are carrying weight. They walk behind a horse or beside a horse, and

we need two dozen pack horses or better. Once they prove themselves they are going to be pack horses, that's where they stay.

Q. It is a question of training?

A. Yeah. You know, it is just -- if we don't feel that the horse is ready for anyone to ride, then we will try them as a pack horse. If he don't work there, then he's not part of Philmont.

Q. And you and who else participates in that classification of these horses?

A. Well, I would say Chuck Enloe and Rod some and Bob some.

Q. They report to you?

A. You know, there's always at least three of us -- at least two of us in the arena when they are riding those horses. That's part of their training process. It's -- we are watching the wranglers catch a horse, ride them, saddle him, mount, dismount, and at the same time you are watching those horses just try to figure out where they are going to fit in.

Q. Watching the horsemen, also, the summer staff horsemen?

A. It is all -- all the training is done together. We're not isolating the horsemen from the wranglers. The horseman works at the slowest person's pace as well.

Q. So does that function as well for the horses, if you have horses that are real qualified but you've got one that's dragging its feet, so to speak? You work with that horse to get them up to the level of the other ones?

A. At that point, I don't think there's much you can do for a horse like that. He's going to fit in as a trail horse and all he's going to do is walk. You know, we will try to spank him a little bit just to try to make him keep up, but once he's assigned his duty, he's going to be a trail horse and --

Q. Did you ever consider Spinner for a trail horse?

A. No, not right off, no. We -- we -- I sent him to Clarks Fork to be a working horse knowing that -- watching him being rode in the arena at a walk that he would try to get out of line. So the instructions with Spinner were "Ride him. If there's an extra wrangler on a horse ride or at camp, put him on Spinner, put him in line, but don't let the participants ride him."

Q. That would be the summer staff wrangler; right?

A. That's right.

Q. But it could also be Chuck Enloe or Rod Taylor or you if you were around?

A. It could be, but there's so much -- there's -- you know, you've got four cavalcades out and three other

horse camps going on. It is hard to focus on just that one camp. We're doing other things. Rod is taking care of the cattle. We're supplying feed and stuff for the cavalcade program. You always have horses that are sick, crippled, sore that we need to pick up, bring down and doctor. We're not just focused on this one camp.

Q. Yeah. So it depends on the duty that day where your permanent staff is going to be, whether it is taking feed up to one of the other camps, Beaubien or to Clarks Fork, or bring the horse to the vet or working in the corrals at Cattle Headquarters? You always try to keep an eye on things in the process?

A. That's right.

Q. You leave it up to the wranglers and the horsemen and summer staff to manage the cavalcades, but you watch them as you're doing your other duties as I understand it?

A. Okay. Well, the cavalcades and the camp horsemen are two different deals.

Q. Separate things?

A. We have cavalcades that go through some of these camps, but the camp horseman, he's there for the summer. That's his camp. He's got the same string of horses. He's going to have wranglers rotate him through that camp. He won't have the same hands there all summer.

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Q. That's the one that's running trail rides?
A. That's the trail ride.
Q. The cavalcades --
A. The same with the cavalcades, the cavalcade horseman is going to be south cavalcade all summer, but they are going to have a different wrangler starting July 5th every week. The first two cavalcades is going to be a horseman and an experienced wrangler to take out the first two cavalcades.
Q. When you say experienced wrangler, you want somebody who's been there before?
A. At least a second year.
Q. You are talking summer staff?
A. That's right.
Q. Is that how cavalcade 706, the one where Linda Bergey was injured on, is that how that started with Sara McGatha Shaddix and Eric Perry?
A. That's right. That would have been Eric's first trip. Sara had already taken two cavalcades out. We made the rotation. Eric had been working at base camp the first two weeks, taking training center rides out.
Q. What does that mean?
A. It is a trail ride, but it is family.
Q. Right around here?
A. Yes. People that come to this operation right

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here.
Q. But it doesn't go into the mountains?
A. No, it does not.
Q. How many hours does it take for that ride?
A. Probably two hours. By the time -- they start at 8:00, and by the time you get them instructions and get them mounted, out, they are back by 10:30, 11:00. A lot of times they request to be back at a certain time.
Q. Eric would handle one of those by himself?
A. No, sir.
Q. Two wranglers? How many?
A. Two, three.
Q. Two or three wranglers?
A. Depending on the size of the ride.
Q. You have limits here with regard to how many wranglers and horsemen per cavalcade participants; do you not?
A. Yes. There's always two on every ride and anything over 15, there's three, at least three.
Q. As I understand it from Mr. Ricklefs, the only training brochures you guys use are the ones at the Philmont Scout Ranch Horse Department manual; is that correct?
A. That's correct.
Q. That's what you rely on when you are training

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your wranglers and your horsemen summer staff?
A. Well -- yes, that and just experience.
Q. And your experience?
A. But I don't know if you've seen the manual. It is pretty extensive. There's a lot of information there.
Q. Let's go back to Spinner then. You assigned that horse up to Clarks Fork; did you not?
A. Yes.
Q. Did you make the assignment or just happened to be that's the way the cut went on the horses?
A. It could be both. I don't remember. But I do know that I --
Q. That he ended up there?
A. I made the decision one way or the other. Or the cut. But he ended up at Clarks Fork.
Q. While he was at Clarks Fork, did you become aware of any particular problems that he had up there?
A. Other than him stepping out of line, no.
Q. Do you get reports, like the trail ride reports from Clarks Fork?
A. I get one from every camp.
Q. Do you read them?
A. Yes, I do.
(Exhibit A marked.)

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Q. I'm going to hand you Exhibit A to your deposition, have you look at that. Is this a copy of the trail ride reports from Clarks Fork for the periods for which they state there?
A. Yeah. That would be one.
Q. The first few pages talk about some problems -- go ahead and read the first page of that -- that the wrangler Jonathan Porter -- is he a wrangler or --
A. He was a horseman at Clarks Fork.
Q. Horseman at Clarks Fork was having problems with Spinner and a couple of other horses, I believe?
A. That's right.
Q. What was done to correct that?
A. At this point, nothing. I mean, I think he was -- he had been instructed -- like I said earlier, if there was an extra wrangler available to ride the horse -- I guess, you know, when you have such a big program and you have X amount of horses, you need every horse that you can use. When you have crippled horses and sick horses and cut horses, you want to make these horses work somewhere. You know, the intent was that he become either a trail horse there at Clarks Fork or wrangler horse, to work somewhere. He would say, "I can't keep him in line. I can't keep him in line." We did that two weeks. I said, "Keep working him, trying,

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see what happens."
Q. Exhibit A only has couple of days. June 16th, 2002, is the first page. The next page is the following day maybe. Were there other incidents of problems being reported to you on Spinner?
A. No. This is a different week.
Q. Okay. What week is that one, on page 2?
A. 6/23.
Q. That is a different week. Sure.
A. Spinner, Sombrero, and Frank.
Q. Frank and Spinner seem to be like the class cut-ups up there. Frank was mentioned up in the first page, also, as having --
A. Yeah.
Q. -- adaptive difficulty?
A. I don't know.
MR. MARTINEZ: I object to the form.
Q. I thought it was a funny joke.
(Off the record.)
A. Here is a different week.
Q. (By Mr. Casey) Go ahead. I'm sorry.
A. There's three weeks. I guess two of the weeks Spinner was involved. Frank Sinatra I remember didn't work at summer. We got him and turned him out. He didn't do anything. Just to be fair to Spinner,

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Honeybun became a pack horse that same summer, 2002, as well.
Q. So at least in the mid June to the end of June, they were having trouble with Spinner up there being a riding horse at Clarks Fork?
A. Yes.
Q. He's transferred over to become a pack horse?
A. That's right.
Q. And that would have taken you to the first week in July?
A. I can't say for sure, because on the last report here in June, he's not on the report. He may have been down already.
Q. He may have been down here already at Cattle Headquarters?
A. Yes.
Q. You, I guess, made the decision to convert him to a pack horse at this point?
A. That's correct.
Q. Who did you -- strike that.
Is there any kind of particular training you do with the horses that become pack horses?
A. Well, what we do is we have staff down here that basically handle the horses here.
Q. That's summer staff?

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A. Yes. I might say something like, "Go catch Spinner. Bring him up here. Throw packs on him."
Q. You don't have a specific recollection of that?
A. Well --
Q. That's probably what happened?
A. That's probably what happened. And I'm speculating, I guess. But I would speculate that it was Eric and John Bush that did that. So they threw a saddle on him.
Q. Pack saddle?
A. Pack saddle, probably put 50 pounds of feed on each side, in the panniers, put the panniers on them and probably saddle a horse or two and took the horse out, back to the horse pasture, brought him back in on Saturday and probably did that two, three times.
Q. You are not certain? That's just your guess?
A. I know he was packed.
Q. He was packed? What you just said was they took him out two or three times. That's a guess, but you know he was packed and started in the process of becoming a pack horse?
A. Oh, that's right. I know he went out to the horse pasture at least twice and on a training center ride once.
Q. Did that involve having guests on there?

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A. Yes.
Q. Was that a cavalcade?
A. No. It was a training center ride, headquarters ride.
Q. To your knowledge, was this cavalcade the first one that Spinner was going on?
A. Well, you know, that particular day was a circle ride for that cavalcade. They generally don't take a pack horse out on that day. Again, that horse was in training, I guess you could say. He again just had a pack saddle on, probably 50 pounds of feed on each side in the panniers, probably carrying 100 pounds, approximately.
Q. Let me go back for a second, if I may. Go ahead and finish your thought.
MR. MARTINEZ: Go ahead.
A. And he was just, like I said, in training. He was not carrying any of their gear. He was -- it was just -- it was a circle ride. He was going -- they go out and eat lunch and they come back in. That was a plan for him that day.
Q. (By Mr. Casey) The circle ride is different from what you've described as the little family ride here?
A. Yes, it is.
Q. Explain the difference for us, please.